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The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the 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 or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

# 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

### **Corrections Department[201]**

- Replace Chapter 45
- Replace Chapters 50 and 51

### **Economic Development Authority[261]**

- Replace Analysis
- Remove Reserved Chapters 28 to 30
- Insert Chapters 28 to 30
- Replace Chapter 56
- Remove Reserved Chapters 217 to 219, Chapters 220 to 222, and Reserved Chapters 223 to 399
- Insert Reserved Chapters 217 to 399

### **Iowa Finance Authority[265]**

- Replace Chapter 12

### **Human Services Department[441]**

- Replace Chapter 177

### **Racing and Gaming Commission[491]**

- Replace Analysis
- Replace Chapter 1
- Replace Chapters 4 to 6
- Replace Chapter 8
- Replace Chapters 10 to 14

### **Professional Licensure Division[645]**

- Replace Chapter 21
- Replace Chapter 24
- Replace Chapter 41
- Replace Chapter 326

### **Revenue Department[701]**

- Replace Analysis
- Replace Chapter 300
- Replace Chapter 302
- Replace Chapter 304
- Replace Chapter 307
- Remove Chapter 404 and Reserved Chapters 405 to 499

Insert Chapters 404 and 405 and Reserved Chapters 406 to 499  
Replace Chapters 501 and 502  
Replace Chapter 601  
Replace Chapter 700

**Workforce Development Department[871]**

Replace Chapters 23 and 24  
Replace Chapter 26

## CHAPTER 45

## PAROLE

[Prior to 10/1/83, Social Services[770] Ch 26]

[Prior to 3/20/91, Corrections Department[291]]

**201—45.1(906) Administration.**

**45.1(1) *Supervision.*** Persons committed to the director of the department of corrections and granted parole by the Iowa board of parole shall be supervised by the judicial district departments of correctional services. The district departments shall impose conditions of parole as contained in rule 201—45.2(906).

**45.1(2) *Effective date/parole agreement.***

*a.* Parole is effective only upon the acceptance of the terms of parole as evidenced by the signing of the standard parole agreement form by the parolee before a district department employee. The parole agreement shall be issued only upon the written order of the board of parole and shall not be issued prior to the establishment of an approved parole plan. The parolee may not be released on parole prior to the execution of the parole agreement. The parole agreement shall contain the conditions of parole pursuant to rule 201—45.2(906) and shall contain the parolee's reporting instructions.

*b.* Districts shall have statewide approved written policies and procedures which ensure the use of the statewide case management system. Districts will use the statewide approved and validated risk/needs instrument that assesses and addresses client risk, criminogenic needs and protective factors in an effort to mitigate the probability for future violence, criminal behavior and victimization. By stratifying risk using the risk-need-responsivity model, districts will focus the majority of their resources on clients who pose a greater risk to reoffend ensuring that all moderate-high risk clients receive evidence-based case planning and case management using the risk-need-responsivity model and core correctional practices to include: ongoing risk needs assessment, case plan follow-up and documentation, transfer of records, staff training, and continuous quality improvement.

*c.* The district department shall have written policies and procedures to ensure the delivery of parole services which are consistent with statewide policy and expectations.

**45.1(3) *Earned and honor time.*** Earned and honor time shall be awarded in accordance with department of corrections policy.

**45.1(4) *Furlough.*** Parolees may be granted a community placement furlough to their prospective parole area upon request by the assigned supervising parole officer pursuant to 201—subparagraph 20.12(5) “b”(2). The district departments shall have written policy and procedures on furloughs.

**45.1(5) *Parole release funds.*** Clients approved for parole will receive clothing or a clothing allowance, money and transportation in accordance with the provisions of Iowa Code section 906.9.

**45.1(6) *Medical services.*** The district department shall have written policies and procedures which govern the medical care of parolees in case of emergencies, sudden illnesses, accidents, or death.

**45.1(7) *Pharmaceuticals.*** Except in an emergency pursuant to Iowa Code section 613.17, the district department personnel shall not administer or dispense any prescription drugs, including antabuse, to parolees.

**45.1(8) *Grievance procedure.*** The district department shall have a written grievance procedure for all parolees which shall include the method by which all parolees are notified of the procedure.

[ARC 9097B, IAB 9/22/10, effective 10/27/10; ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter; ARC 4152C, IAB 12/5/18, effective 11/14/18]

**201—45.2(906) Conditions of parole.**

**45.2(1) *Standard conditions.*** The district department shall have all persons on parole sign conditions of parole that are consistent with the standard conditions as established and approved by the board of parole. Standard conditions are applicable to all parolees.

*a. Restrictions on movement.* The parolee shall report immediately to the supervising officer in the judicial district designated in the parole instructions. The parolee will reside at the place designated in the parole instructions and shall not change residence unless prior approval is received from the supervising judicial district director or director's designee. The parolee will obey any curfew restrictions placed upon the parolee by the supervising officer. The parolee shall not leave the county of residence

unless prior permission to travel is received from the parolee's supervising judicial district director or director's designee.

*b. Supervision conduct.* The parolee shall maintain contact with the supervising officer as directed and shall not lie to, mislead, or misinform the parolee's supervising officer either by statement or omission of information. The parolee shall use the parolee's true name in all dealings. The parolee shall follow all conditions that can and may be placed on parole by the board of parole and any additional conditions that can be added by the supervising officer at any time during the parolee's supervision.

*c. Restrictions on association.* The parolee shall not associate with any person having a criminal record, any person currently under supervision or any person known or suspected to be engaged in criminal activity, unless approved by the parolee's supervising judicial district director or director's designee. The parolee shall treat all persons with respect and courtesy and refrain from assaultive, intimidating, or threatening verbal or physical abuse. The parolee shall have no direct or indirect contact or communication with any victim or the family of any victim of the parolee's offense(s), unless contact or communication with any victim or the family of any victim is authorized by the parolee's supervising judicial district director or director's designee.

*d. Treatment, rehabilitation and other programming.* The parolee shall participate in and cooperate with any treatment, rehabilitation, or monitoring programs, including any electronic monitoring, required by the supervising officer in the district in which the parolee is being supervised. The parolee shall seek mental health services as appropriate. The parolee shall submit a DNA sample if requested by the parolee's supervising officer or other law enforcement official. If needed, the parolee shall continue to work toward attaining a GED or complete the requirements for a high school diploma. The parolee shall schedule and keep all appointments necessary for the successful completion of programs and services in which the parolee is participating and for the successful completion of the parolee's parole supervision. The parolee shall sign any release or waiver requested by the parolee's parole officer to authorize the parole officer to receive and access any information relating to any treatment program or otherwise as requested by the parole officer.

*e. Substance abuse.* The parolee shall not use, purchase, or possess alcoholic beverages and shall submit to alcohol tests and drug tests when directed by the parolee's supervising officer. The parolee shall not enter taverns or liquor stores or other establishments where the primary activity is the sale of alcoholic beverages. The parolee will not use, ingest, inject, huff, possess or smoke any illegal or synthetic substances. The parolee shall not use, purchase, possess or transfer any drugs unless they are prescribed by a physician or physician assistant.

*f. Legal conduct.* The parolee shall obey all laws and ordinances. The parolee shall notify a parole officer within 24 hours if the parolee is arrested or receives a citation or if the parolee has any contact with law enforcement. The parolee shall not own, possess, use or transport firearms, dangerous weapons, or imitations thereof, unless approved by the parolee's supervising officer. The parolee will submit the parolee's person, property, place of residence, vehicle, and personal effects to search at any time, with or without a search warrant, warrant of arrest or reasonable cause by any parole officer. The parolee waives extradition to the state of Iowa from any jurisdiction in or outside the United States (including Indian reservation or Indian trust land) and also agrees that the parolee will not contest any effort by any jurisdiction to return the parolee to the state of Iowa.

*g. Economic.* The parolee shall pay restitution, court costs, and attorney fees as directed by the court. The parolee shall pay any fees associated with programs and services ordered by the supervising judicial district director or director's designee during the course of the parolee's supervision. The parolee will comply with all the terms of the parolee's restitution plan. The parolee will pay to the supervising district department of correctional services an enrollment fee to offset the cost of the parolee's supervision as provided in the Iowa Code. The parolee will pay this fee upon such terms as the supervising officer directs. The parolee understands that the parolee may not be discharged from parole until all fees are paid. The parolee shall secure and maintain employment as directed by the supervising officer. The parolee shall notify the supervising officer within 24 hours if the parolee's employment is terminated. The parolee shall seek employment if the parolee is unemployed and shall report the parolee's efforts to find employment as directed by the parolee's supervising officer.

*h. Driving.* The parolee shall not operate a motor vehicle upon the public roads and highways unless the parolee has a current, valid driver's license and insurance. If the parolee's driving privileges were suspended, revoked or barred, and now have been reinstated by the department of transportation, the parolee must receive approval from the parolee's supervising judicial district director or director's designee prior to getting a driver's license.

**45.2(2) *Special conditions.*** Special conditions may be imposed at any time and shall only be imposed in accordance with the needs of the case as determined by the judicial district department of corrections, the department of corrections or the Iowa board of parole. Special conditions shall be handled in the following manner.

*a. Deletions.* When a condition is being deleted, the deletion shall be clearly noted on all copies of the parole agreement. Both the parolee and district department staff shall sign the notation of deletion including the date of the deletion and shall upload the updated agreement into the appropriate Iowa corrections offender network (ICON) module(s). The district director or designee and the board of parole shall be notified of those deletions required by local policy and board of parole administrative rules.

*b. Additions.* Additional conditions may be imposed. When a condition(s) is added, the additional condition(s) shall be clearly indicated on all copies of the parole agreement and shall be signed and dated by the parolee and the supervising agent, and the updated agreement shall be uploaded into the appropriate ICON module(s).

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter; ARC 6905C, IAB 2/22/23, effective 3/29/23]

#### **201—45.3(910) Restitution.**

**45.3(1) *Restitution plan of payment.*** There shall be a restitution plan of payment developed on those parolees who have been court ordered to pay restitution unless the court-ordered restitution plan of payment has been completed. Factors which must be considered in developing the restitution plan of payment are:

- a.* Present income/employment
- b.* Physical/mental health
- c.* Education
- d.* Financial situation
- e.* Family circumstances

The district department shall have written policies and procedures governing the development and modification of the restitution plan of payment. Final approval of the restitution plan of payment shall be by the district director.

The approved restitution plan of payment shall be forwarded to the appropriate clerk of court by the district department or to the person responsible for collection, if collections are performed by the district department.

#### **45.3(2) *Compliance.***

- a.* The parolee shall submit payments in a timely manner to the clerk of court or district department.
- b.* If payments are made to the clerk of the district court, the parolee shall provide the district department proof of payments.
- c.* The district department will provide statements to the appropriate clerks of court when community service is ordered in lieu of financial restitution.

#### **201—45.4(908) Violations.**

**45.4(1) *Offenses.*** The district department may at any time report violations of the conditions of parole to the board of parole.

Within five business days of receipt of knowledge of the commission of required reportable violations as designated by the board of parole, the supervising officer shall make written report to the board of parole of the violations.

**45.4(2) *Detention.*** A parole officer, with supervisory approval, may arrest a parolee when there is probable cause to believe the parolee has violated conditions of parole which may result in parole revocation. The arresting agent may request temporary detention of the parolee in a local detention

facility. In such cases, all actions of the agent shall be in accordance with Iowa Code sections 908.1 and 908.2.

**45.4(3) *Absconding from supervision.*** Upon receipt of information that a parolee has absconded from supervision, a preliminary parole violation information shall immediately be filed with a judge, an associate judge, or a magistrate and a warrant for arrest requested.

[ARC 9097B, IAB 9/22/10, effective 10/27/10; ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

**201—45.5(906) Voluntary return to institution.** A parolee may return to an Iowa department of corrections institution for a period not to exceed 90 days for treatment or further training, provided a voluntary return agreement is approved and signed by the district department and the warden of said institution and by the parolee prior to the return. A parolee's voluntary return to the institution will also require a hearing with the parole board administrative law judge.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

**201—45.6(906) Discharge from parole.** The parole officer shall make application for discharge to the district director following the parolee's satisfactory adjustment under supervision and upon the parole officer's determination that the parolee is able and willing to perform in a law-abiding fashion without further supervision. Discharge from parole may be granted prior to expiration of sentence, except for persons convicted for violation of Iowa Code section 709.3, 709.4 or 709.8, on or with a child. Such persons shall not be discharged until expiration of maximum sentence. Discharge granted by the district director shall terminate the person's sentence.

**45.6(1) Recommendation.** The recommendation for discharge from parole as submitted by the supervising officer shall include, but not be limited to, the following:

- a. Parolee's adjustment to parole supervision.
- b. Public offenses committed by the parolee while under supervision.
- c. Violation of any parole conditions set by the board of parole.
- d. Abuse of alcohol or drugs while on parole.
- e. Restitution accomplished by the parolee.
- f. The reasons why the discharge is appropriate, based on the consideration of the parolee's level of risk.

**45.6(2)** Upon discharge, the parole officer shall give the discharged parolee the standard information to be completed and submitted if the ex-parolee seeks restoration of citizenship rights. If the ex-parolee seeks restoration within 60 days of discharge, the parole agent shall recommend for or against the restoration. The standard information shall be forwarded to the board of parole by the person seeking the restoration.

Under no circumstances shall parole supervision extend beyond the expiration of a parolee's sentence. (Iowa Code section 906.15)

**45.6(3)** After 60 days an ex-parolee may request restoration of citizenship by contacting the governor's office to request Executive Clemency forms.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

**201—45.7(905) Supervision enrollment fees.**

**45.7(1)** The district department shall have written policies and procedures governing the preparation, submission, review, modification, collection, and retention of supervision enrollment fees, in accordance with Iowa Code section 905.14(3). Payments shall be made directly to the supervising judicial district department.

**45.7(2)** The district department shall have written policies and procedures governing the waiver of collection of supervision enrollment fees for persons determined to be unable to pay, in accordance with Iowa Code section 905.14(3).

**45.7(3)** The district department shall have written policies and procedures governing the collection and retention of supervision enrollment fees for persons transferring to another judicial district. Fees will be collected by the supervising judicial district department.

**45.7(4)** The district department shall have written policies and procedures governing the collection of supervision enrollment fees for persons who receive additional supervisions.

**201—45.8(905) Infectious disease.** In compliance with Iowa Code section 905.15, the district department shall have a written policy and procedure to prevent the transmission of contagious infectious disease.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 255.29, 905.14, 906.9 to 906.11, 906.15, 906.16, 908.1, 908.2, 908.8 and 910.5.

[Filed 12/12/75, Notice 10/6/75—published 12/29/75, effective 2/2/76]

[Filed 4/30/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]

[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]

[Filed 8/3/77, Notice 6/15/77—published 8/24/77, effective 9/28/77]

[Filed emergency 8/29/83—published 9/14/83, effective 10/1/83]

[Filed 2/24/84, Notice 1/4/84—published 3/14/84, effective 7/1/84]

[Filed 3/3/89, Notice 11/2/88—published 3/22/89, effective 4/26/89]

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[Filed emergency 9/13/91—published 10/2/91, effective 9/13/91]

[Filed 1/31/92, Notice 10/2/91—published 2/19/92, effective 3/27/92]

[Filed emergency 6/30/97—published 7/30/97, effective 7/1/97]

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[Filed ARC 9097B (Notice ARC 8926B, IAB 7/14/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 3929C (Notice ARC 3806C, IAB 5/23/18), IAB 8/1/18, effective 9/5/18]<sup>1</sup>

[Filed Emergency ARC 4152C, IAB 12/5/18, effective 11/14/18]

[Filed ARC 6905C (Notice ARC 6607C, IAB 10/19/22), IAB 2/22/23, effective 3/29/23]

<sup>1</sup> September 5, 2018, effective date of ARC 3929C [amendments to chs 1, 5, 10, 11, 20, 38, 40, 41, 42, 43, 44, 45, 47, 50, 51] delayed 70 days by the Administrative Rules Review Committee at its meeting held August 14, 2018.



TITLE IV  
JAIL INSPECTION STANDARDSCHAPTER 50  
JAIL FACILITIES

[Prior to 10/1/83, Social Services[770] Ch 15]  
[Prior to 3/20/91, Corrections Department[291]]

**201—50.1(356,356A) Definitions.** The following are defined terms:

*“Activity area”* means such area, distinct from the living unit, where prisoners may congregate for programming. This area is to be under constant staff observation.

*“Alternative jail facility”* means a facility designated pursuant to Iowa Code chapter 356A, and which is used as a halfway-house-type facility rather than a jail-type operation. These facilities shall be subject to inspection and accreditation by the state jail inspector utilizing applicable administrative rules for residential facilities pursuant to 201—Chapter 43 and other acceptable operational standards.

*“Average daily population”* means the average number of prisoners housed daily during any given time period.

*“Barrier free”* means no walls or other obstructions impeding contact by staff within their assigned area of operation.

*“Capacity”* means the number of prisoner occupants which any cell, room, unit, building, facility or combination thereof may accommodate according to the square footage and fixture requirements of the standards.

*“Cell”* means prisoner occupancy bedroom space with toilet and lavatory facilities.

*“Cellblock”* means a group of cells with an associated dayroom.

*“Classification”* means a system of obtaining pertinent information concerning prisoners with which to make a decision on assignment of appropriate housing, security level, and activities.

*“Continuous visual observation”* means uninterrupted visual contact unaided by closed circuit television (CCTV).

*“Dayroom”* means a common space shared by prisoners residing in a cell or group of cells, to which prisoners are admitted for activities such as dining, bathing, or passive recreation and which are situated immediately adjacent to prisoner sleeping areas.

*“Detention area”* means that portion of the facility used to confine prisoners.

*“Direct supervision jail”* means a style of jail construction designed to facilitate direct contact between officers and prisoners. The officer is stationed inside the housing unit. Evaluation and classification of prisoners are ongoing and continuous functions of a direct supervision jail and are based on close contact with prisoners.

*“Disability”* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

*“DOC”* means the Iowa department of corrections.

*“Dormitory”* means an open area for two or more prisoners with all fixtures self-contained. There is no barrier between the sleeping area and other fixtures such as shower, table, recreation equipment, or similar items.

*“Emergency situation”* means any significant disruption of normal operations caused by riot, strike, escape, fire, natural disaster or other serious incident.

*“Evaluation”* means an ongoing process whereby judgments are made concerning a prisoner based upon the behavior of that prisoner.

*“Existing facility”* means any place in use as a jail or for which bids have been let for construction prior to September 12, 2001.

*“Holding cell”* means a secure room or cell where prisoners may be held up to 24 hours while awaiting the procedure of commitment or release or court appearances.

*“Holdover”* means a nonsecure area within a law enforcement facility, hospital, mental health facility or other existing public building that is intended to serve as a short-term holding facility for juveniles. A nonsecure area may be a multipurpose area which is unable to be locked.

*“Housing unit”* means a detention area. This area may be a single occupancy cell, multiple occupancy cell, cellblock, or dormitory.

*“Inspection unit”* means the state jail inspection unit.

*“Jail”* means any place administered by the county sheriff and designed to hold prisoners for as long as lawfully required but not to exceed one year pursuant to Iowa Code chapters 356 and 356A.

*“Jail administrator”* means the sheriff, sheriff’s designee, or the executive head of any agency operating a jail. The jail administrator shall be responsible for the operation of the facility according to these rules.

*“Jailer”* means any person who is involved in the booking or supervision of prisoners, who has direct contact with prisoners or who has control over the movement or release of prisoners within the jail. Jailers shall meet the requirements of rules 201—50.10(356,356A) and 50.11(356,356A), Iowa Administrative Code.

*“Jail inspector”* means the department of corrections employee responsible for inspections of jails and enforcement of these rules by authority of Iowa Code section 356.43.

*“Jail supervisor”* means any person who is responsible for the routine operation of a jail during assigned duty hours. While this person does not have to be on the premises at all times, the person must be readily available for consultation.

*“Juvenile”* means any person under the age of 18 years.

*“Living unit”* means an area within a housing unit and that contains individual sleeping compartments, dayrooms, all necessary personal hygiene fixtures, and sufficient tables and seats to accommodate capacity.

*“Lock down”* means whenever prisoners are required to be in their individual cells or locked in same.

*“Mail”* means anything that is sent to or by prisoners through the United States Postal Service.

*“Major remodeling”* means construction that changes the architectural design of an existing jail and that increases or decreases capacity.

*“Medical practitioner”* means a licensed physician, licensed osteopathic physician or physician assistant or medical resources such as a hospital or clinic.

*“Mental illness”* means a psychiatric illness or disease expressed primarily through abnormalities of thought, feeling, and behavior producing either distress or impaired function.

*“Minister”* means a trained person ordained or licensed by a bona fide religion to conduct the services of that faith.

*“Monitoring”* means having a reasonable degree of knowledge or awareness of what activities a prisoner is engaged in during incarceration.

*“Multiple occupancy cell”* means a cell designed for more than one prisoner and accessible to a dayroom.

*“Nonsecure hold”* means a nonsecure area within a law enforcement facility and which is intended to serve as a short-term holding facility for juveniles. A nonsecure area may be a multipurpose area which is unable to be locked.

*“Person performing jail duties”* means all persons directly involved in the provision of services to prisoners or the operation of a jail except:

1. Outside contractors performing specific housekeeping functions under the direct supervision of a jailer.

2. Individuals such as maintenance personnel, cooks, and janitors, if they do not have direct contact with prisoners or routine access to areas occupied by prisoners.

*“Physical jeopardy”* means, due to the prisoner’s physical or mental condition, the prisoner is in peril of serious physical harm.

*“Pod”* means a grouping of two or more housing units, usually found in large facilities, which will aid in the control of prisoners.

*“Prisoner”* means any individual confined in a jail.

*“Residential facilities”* means the facilities governed by 201—Chapter 43.

*“Roving supervising officer”* means an officer who provides direct supervision of prisoners by continuously moving through the housing unit, cells, and activity area of the unit.

“*Segregation cell*” means a single occupancy cell equipped with tamper-resistant bunks, a toilet, and a wash basin which are of the type recommended for maximum security housing.

“*Unencumbered space*” is floor space that is not encumbered by furnishings or fixtures. Unencumbered space is determined by subtracting the floor area encumbered by furnishings and fixtures from the total floor area. (All fixtures must be in operational position for these calculations.)

“*Waiver*” means a waiver of a specific standard granted by the Iowa department of corrections in accordance with 201—Chapter 7.

“*Weapons*” means any instrument, excluding restraining devices, chemical control agents and electronic control devices, with an intended use of self-defense, protection of another, or to gain or maintain compliance from an individual.

[ARC 9578B, IAB 6/29/11, effective 8/3/11; ARC 5538C, IAB 3/24/21, effective 4/28/21]

### **201—50.2(356,356A) General provisions.**

**50.2(1) *Applicability.*** These rules apply to all facilities regulated by Iowa Code chapters 356 and 356A except temporary holding facilities which are covered by 201—Chapter 51.

**50.2(2) *Capacity.*** Established capacities as determined by these rules shall not be exceeded except in the event of an emergency and then only for such a period of time as is necessary to arrange for alternate housing or release of sufficient prisoners to bring the number of persons confined into compliance with the rated capacity.

**50.2(3) *Right to inspect and visit.*** The chief jail inspector or authorized representatives shall visit and inspect jails and may do so on an unannounced basis. Jail personnel and supervisors shall cooperate in inspections and shall exhibit to the inspectors, upon request, all books, records, medical records, data, documents and accounts pertaining to a jail or to the prisoners confined and shall assist inspectors to perform the functions, powers and duties of their office. Provisions of the first paragraph of Iowa Code section 356.43 shall control to the extent of any inconsistency of the provisions of this subrule.

**50.2(4) *Other standards.*** Nothing contained in these standards shall be construed to prohibit local officials from adopting standards and requirements governing their employees and facilities, provided such standards and requirements exceed and do not conflict with standards mandated in this chapter. These standards shall not be construed as authority to violate any state fire safety standard, building standard, health and safety code, or any constitutional requirement. No jail shall be operated without substantially meeting these rules, absent the granting of a waiver.

**50.2(5) *Equal opportunity.*** Facilities, programs, and services shall be available on an equitable basis to both males and females even though each standard does not specify that it applies to both males and females.

**50.2(6) *Nondiscriminatory treatment.*** Each jail administrator shall ensure that staff and prisoners are not subject to discriminatory treatment based upon race, religion, nationality, disability, sex or age absent compelling reason for said discriminatory treatment. Discrimination on the basis of a disability is prohibited in the provision of services, programs, and activities.

[ARC 5538C, IAB 3/24/21, effective 4/28/21]

**201—50.3(356,356A) Inspection and compliance.** The chief jail inspector or authorized representatives shall visit and inspect each jail within this state at least annually to determine the degree of compliance with these standards and within 45 days of each inspection shall report the results to the sheriff and the governing body responsible for the facility.

**50.3(1) *Notice of noncompliance with minimum standards.*** Whenever the determination is made that a jail or other holding facility is not in compliance with established minimum state jail standards, the chief administrator of the affected governmental facility will be notified by letter posted or personal delivery of the need to bring the facility into compliance. The jail inspection unit shall issue a notice of noncompliance to the responsible jail administrator and the governing body of each instance in which the jail fails to comply with the minimum standards established under these rules. The letter shall contain a listing of the statute(s) and rule(s) with which the facility is not in compliance and a description of the deficiencies and shall specifically identify each minimum standard with which the jail has failed to comply.

**50.3(2) Enforcement of minimum standards; remedial orders.** Upon receipt of a notice of noncompliance pursuant to subrule 50.3(1), the responsible authorities shall initiate appropriate corrective measures within the time prescribed by the jail inspection unit in its notice (which shall not exceed 90 days) and shall complete the corrections within a reasonable time as prescribed by the notice of noncompliance. The jail inspector may agree with the responsible authorities to a plan of action detailing corrective steps with corresponding time frames which will bring the facility into compliance within a reasonable time. If the responsible officials receiving a notice of noncompliance fail to initiate corrective measures or to complete the corrective measures within the time prescribed, the jail inspection unit may order the jail in question or any portion thereof closed, that further confinement of prisoners or classifications of prisoners in the noncomplying jail or any portion thereof be prohibited, or that all or any number of prisoners then confined be transferred to and maintained in another jail or detention facility, or any combination of remedies.

An order for closure shall contain the following:

- a. Statute(s) and rule(s) violated.
- b. A brief description of the deficiencies.
- c. The effective date of the order.
- d. An explanation of remedies required before reopening.

This order shall be the notice of noncompliance pursuant to Iowa Code section 356.43 and 201—Chapter 12 concerning contested cases. The matter shall then proceed in accordance with 201—Chapter 12. The jail inspector may agree with the responsible authorities to a plan of action detailing corrective steps with corresponding time frames which would bring the facility into compliance within a reasonable time. The remedial order shall be in writing and shall specifically identify each minimum standard with which the jail has failed to comply. Such remedial order shall become final and effective 30 days after receipt thereof. In the event immediate closure is required, emergency action shall proceed pursuant to 201—12.24(17A).

**50.3(3) Precedent.** Because rules cannot adequately anticipate all potential specific factual situations and circumstances presented for action, determination or adjudication by the jail inspection unit, the nature of the action taken with regard to any matter or the disposition of any matter pending before the jail inspection unit is not necessarily of meaningful precedential value, and the department shall not be bound by the precedent of any previous action, determination, or adjudication in the subsequent disposition of any matter pending before it.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12 and 356.43.  
[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

#### **201—50.4(356,356A) Physical plant—general.**

**50.4(1) Building to meet existing codes.** All facilities are required to be structurally sound and to meet existing building code and health code requirements.

**50.4(2) Professional inspections.**

a. The state jail inspector may require for good reason that an agency operating a jail cause it to be examined by an architect, engineer, licensed electrician, health inspector, plumber, heating and air conditioning specialist, food establishment inspector, state fire marshal or fire inspector or any other person with expertise which may be of assistance to the state jail inspector in making an informed decision relative to the jail operation or structure. Inspection by a municipal inspector qualified in these areas may be permitted.

b. Any facility determined to be deficient following inspection may be ordered closed by the jail inspector, or specific conditions limiting its operation may be imposed in lieu of closing.

An order of closure shall contain the following:

- (1) Statute(s) and rule(s) violated.
- (2) A brief description of the deficiencies.
- (3) The effective date of the order.
- (4) An explanation of remedies required before reopening.

An order of closure shall adhere to subrules 50.3(1) and 50.3(2). This order shall be the notice of noncompliance pursuant to Iowa Code section 356.43 and 201—Chapter 12 concerning contested cases. The matter shall then proceed in accordance with 201—Chapter 12.

c. In the event that any agency fails to cooperate in an inspection, the jail inspector may arrange for an inspection and the agency operating the facility shall be financially responsible for any expense involved.

**50.4(3) Heating and ventilation.** All detention and living areas shall be reasonably heated and ventilated, with air flow sufficient to admit fresh air and remove disagreeable odors, to ensure healthful and comfortable living and working conditions for prisoners and staff. Fans and an adequate supply of cold liquids will be made available and utilized when indoor temperatures exceed 85° Fahrenheit.

**50.4(4) Cells.** Maximum security cells shall be equipped with tamper-resistant bunks, secured table(s) and seat(s), plus a toilet and washbasin recommended for jail or prison use. Cells shall have an adequate supply of both hot and cold water; mixing valves may be used. Housing areas of less secure design need not contain tamper-resistant fixtures.

**50.4(5) Lighting.** Lighting shall be a minimum of 20 candlepower at the table top for the purposes of reading and writing. Living areas shall be devoid of dark areas. Hallways, entrances and exits shall be sufficiently lit to observe a person entering or exiting. Light controls shall be out of the control of prisoners. Housing areas may be variably illuminated to allow sleep, but continuous observation of prisoners must be possible. All exits shall be equipped with independent emergency lighting sources.

**50.4(6) Screens.** If windows are opened for ventilation, screens shall be installed and maintained in good repair.

**50.4(7) Electrical.** Drop cords shall not be used as permanent wiring. Electrical service shall meet the requirements of the governmental body permitted by statute to adopt standards for electrical service. Appliances shall plug directly into a fixed receptacle. Emergency generator power shall be available. Emergency generator power shall be tested at regular intervals not less than monthly. A record of test dates shall be maintained.

**50.4(8) Storage.**

a. Storage of any type in primary detention areas is not permitted except for supplies necessary for the operation of the jail.

b. Adequate storage space for prisoners' personal clothing and property shall be provided. Space provided shall be secure, and the prisoner's name or identification number shall be affixed to the storage space. Property shall be inventoried and accounted for as provided in Iowa Code section 804.19.

c. Janitorial supplies shall be stored in a manner to prevent unauthorized prisoner access. Janitorial supplies and equipment shall not be stored in prisoner living areas.

d. Areas used for storage of chemicals, paints, and cleaning supplies shall not be accessible to prisoners and such products shall be stored away from the primary detention area. Such storage shall not be in boiler or furnace rooms.

**50.4(9) Mirrors.** Mirrors within detention areas shall be of tamper-resistant construction and securely fixed in place.

**50.4(10) Firearms lockers.** A place inaccessible to prisoners shall be provided where officers entering the security area can store firearms.

**50.4(11) Noise level.** Prisoner noise inside the jail shall be controlled to ensure an orderly and secure jail operation. Jail policy shall include a rule pertaining to noise level. Prisoners must be advised of the rule.

[ARC 9578B, IAB 6/29/11, effective 8/3/11]

**201—50.5(356,356A) Physical requirements for existing facilities.** This rule shall apply to all jails in existence prior to June 30, 1984. In cases where an existing jail undergoes major remodeling after September 12, 2001, rules 201—50.6(356,356A) and 201—50.7(356,356A) shall apply to the area being upgraded.

**50.5(1)** Each single occupancy cell for prisoners in normal status shall have a minimum floor area of 40 square feet provided that the prisoner is not required to spend more than 16 hours during any 24-hour period in the cell.

**50.5(2)** Each single occupancy cell must provide 50 square feet of floor space for prisoners held more than 16 hours during any 24-hour period.

**50.5(3)** Multiple occupancy cells shall provide 40 square feet of floor space for the first prisoner and an additional 20 square feet for each additional prisoner provided that no prisoner is required to spend more than 16 hours in the cell during any 24-hour period.

**50.5(4)** Prisoners held in multiple occupancy cells for more than 16 hours during any 24-hour period shall have a minimum of 50 square feet of floor space for the first prisoner and 30 additional square feet of floor space for each additional prisoner.

**50.5(5)** Except in emergency situations, no multiple occupancy cell shall house more prisoners than the rated capacity.

**50.5(6)** Dormitory units shall have a minimum of 60 square feet of floor space per prisoner.

**50.5(7)** Each single occupancy cell, multiple occupancy cell and dormitory unit shall provide the following:

- a.* A minimum of 7 feet from floor to ceiling height.
- b.* A bunk of adequate size for normal-sized adults.
- c.* Access to a functional toilet.
- d.* Access to a lavatory that furnishes both hot and cold water; mixing valves may be used.
- e.* Sufficient tables and seats to accommodate the rated capacity of the unit. The tables and seats may be located in the cells or in an adjacent dayroom.
- f.* A functionally operating shower which furnishes both hot and cold water; mixing valves may be used. This shower may be either in the housing unit itself or in an adjacent area.

**50.5(8)** Each dayroom shall have a minimum floor area of 30 square feet. There shall be an additional 15 square feet for each prisoner beyond one.

**201—50.6(356,356A) Physical requirements for new and remodeled facilities—after June 30, 1984.** This rule shall apply to jails which are of new construction and to all major remodeling after June 30, 1984. For jails which are of new construction and for all major remodeling after September 12, 2001, rule 201—50.7(356,356A) shall apply. Plans for any remodeling or new construction shall be submitted to the jail inspection unit prior to letting any bids or commencing any construction subject to this rule. The jail inspection unit shall, within 60 days of receiving plans, review them for compliance with this rule and forward any comments to the submitting authority.

**50.6(1)** New housing units may be single occupancy cells, multiple occupancy cells or dormitory units. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 70 square feet of floor space for the first prisoner and an additional 50 square feet of floor space for each additional prisoner. Dormitory units shall provide a minimum of 60 square feet per prisoner.

**50.6(2)** All housing units shall provide:

- a.* No less than 7 feet of space between the floor and ceiling.
- b.* A bunk of adequate size for normal-sized adults for each prisoner.
- c.* Sufficient desks/tables and chairs/seats to accommodate the capacity of the housing unit.
- d.* A dayroom which provides a minimum floor area of 30 square feet for the first prisoner and an additional 15 square feet for each prisoner beyond one. (Dormitories excluded.)
- e.* A functionally operating shower which produces both hot and cold water.
- f.* A lavatory that furnishes both hot and cold water for each group of nine prisoners or portion thereof.
- g.* A functional toilet for each group of nine prisoners or portion thereof.

**50.6(3)** Each maximum security cell shall have a security-type toilet/lavatory combination fixture which provides adequate hot and cold running water. These cells may rely on common toilet facilities

located outside the detention room provided that the prisoner is never involuntarily locked in the room and denied access to the toilet facilities.

**50.6(4)** Holding cells shall provide a minimum of 20 square feet per prisoner with a total capacity per cell of eight prisoners. Holding cells need not contain any fixture other than a means whereby prisoners may sit. Drinking water and toilet facilities shall be made available under staff supervision. Dayrooms need not be available to prisoners held in holding cells. Holding cells are for detaining persons for a limited period of time, not to exceed 24 hours, except in cases of emergency, while awaiting booking, processing, transfer, court appearance or discharge. Detainees will be supplied blankets if detained overnight in the holding cell. Emergencies are defined as unexpected occurrences, requiring immediate attention, of singular incident and resolution.

**50.6(5)** The facility shall be designed to admit natural lighting and to give access to outside viewing by prisoners where practical.

**50.6(6)** The facility shall be designed and constructed so that prisoners may be segregated according to existing laws and regulations.

**50.6(7)** Except in emergency situations, no housing unit shall house more prisoners than its rated capacity.

**50.6(8)** All hinged doors serving as required exits shall swing with exit traffic.

**201—50.7(356,356A) Physical requirements for new and remodeled facilities—after September 12, 2001.** This rule shall apply to jails which are of new construction and all major remodeling or reconstruction after September 12, 2001. Plans for any remodeling or new construction shall be submitted to the jail inspection unit prior to letting any bids or commencing any construction subject to this rule. The jail inspection unit shall, within 60 days of receiving plans, review them for compliance with this rule and forward any comments to the submitting authority.

**50.7(1)** New housing units may be single occupancy cells, multiple occupancy cells or dormitory units. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 35 square feet of unencumbered floor space for each prisoner. Dormitory units shall provide a minimum of 60 square feet per prisoner.

**50.7(2)** All housing units shall provide:

- a. No less than 7 feet of space between the floor and ceiling.
- b. A bunk of adequate size for normal-sized adults for each prisoner.
- c. Sufficient desks/tables and chairs/seats to accommodate the capacity of the housing unit.
- d. A dayroom which provides a minimum floor area of 30 square feet for the first prisoner and an additional 15 square feet for each prisoner beyond one. (Dormitories excluded.)
- e. A functionally operating shower which produces both hot and cold water for each group of 12 prisoners.
- f. A lavatory that furnishes both hot and cold water for each group of 9 prisoners or portion thereof.
- g. A functional toilet for each group of 9 prisoners or portion thereof.

**50.7(3)** Each maximum security cell shall have a security-type toilet/lavatory-combination fixture which provides adequate hot and cold running water. These cells may rely on common toilet facilities located outside the detention room provided that the prisoner is never involuntarily locked in the room and denied access to the toilet facilities.

**50.7(4)** Holding cells shall provide a minimum of 20 square feet per prisoner with a total capacity per cell of eight prisoners. Holding cells need not contain any fixture other than a means whereby prisoners may sit. Drinking water and toilet facilities shall be made available under staff supervision. Dayrooms need not be available to prisoners held in holding cells. Holding cells are for detaining persons for a limited period of time, not to exceed 24 hours, except in cases of emergency, while awaiting booking, processing, transfer, court appearance or discharge. Detainees will be supplied blankets if detained overnight in the holding cell. Emergencies are defined as unexpected occurrences, requiring immediate attention, of singular incident and resolution.

**50.7(5)** Exercise areas shall be 15 square feet per prisoner for the maximum number of prisoners expected to use the space at one time in accordance with 50.18(1) "c."

**50.7(6)** The facility shall be designed to admit natural light and to give access to outside viewing by prisoners where practical.

**50.7(7)** The facility shall be designed and constructed so that prisoners may be segregated according to existing laws and regulations.

**50.7(8)** Except in emergency situations, no housing unit shall house more prisoners than its rated capacity.

**50.7(9)** All hinged doors serving as required exits shall swing with exit traffic.

**201—50.8(356,356A) Physical requirements for new and remodeled facilities—after December 28, 2005.** This rule shall apply to all jails which are of new construction and to all major remodeling or reconstruction after December 28, 2005.

**50.8(1)** Cells and dormitory units.

*a.* Single occupancy cells shall provide a minimum of 35 square feet of unencumbered floor space. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 70 square feet of total floor space.

*b.* Multiple occupancy cells shall provide a minimum of 25 square feet of unencumbered floor space for each prisoner. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 35 square feet of unencumbered floor space for each occupant.

*c.* Dormitory units shall provide a minimum of 60 square feet of floor space for each prisoner, exclusive of lavatories, showers, and toilets.

**50.8(2)** All housing units shall provide:

*a.* No less than 7 feet of space between the floor and ceiling.

*b.* A bunk of adequate size for normal-sized adults for each prisoner and at least 12 inches off the floor.

*c.* Sufficient desks/tables and chairs/seats to accommodate the capacity of the housing unit.

*d.* A dayroom, which provides a minimum floor area of 35 square feet of space per prisoner (exclusive of lavatories, showers and toilets) for the maximum number of prisoners who use the dayroom at one time. No dayroom shall encompass less than 100 square feet of space, exclusive of lavatories, showers and toilets. Dayrooms shall provide sufficient seating and writing surfaces. (Dormitories excluded.)

*e.* A functionally operating shower which produces both hot and cold water for each group of 12 prisoners.

*f.* A lavatory that furnishes both hot and cold water for each group of 9 prisoners or portion thereof.

*g.* A functional toilet/stool for each group of 9 prisoners or portion thereof. Urinals may be substituted for up to one-third of the toilets in housing units for male prisoners.

**50.8(3)** Each maximum-security cell shall have a security-type toilet/lavatory-combination fixture that provides adequate hot and cold running water.

**50.8(4)** Holding cells/special-needs cells.

*a.* Holding cells shall provide a minimum of 20 square feet per prisoner with a maximum capacity per cell of eight prisoners. Holding cells need not contain any fixture other than a means whereby prisoners may sit. Drinking water and toilet facilities shall be made available under staff supervision. Dayrooms need not be available to prisoners held in holding cells. Holding cells are for detaining persons for a limited period of time not to exceed 24 hours, except in cases of emergency, while the persons are awaiting booking, processing, transfer, court appearance or discharge. Prisoners will be supplied blankets if detained overnight in the holding cell. Emergencies are defined as unexpected occurrences, requiring immediate attention, of singular incident and resolution.

*b.* Special-needs cells. A jail may contain one or more single occupancy cells, designated as special-needs cells, in which to temporarily contain violent persons. The cell shall have not less than 40 square feet of floor space and a ceiling height of not less than 7 feet. The cell shall be constructed to minimize self-injury. Toilet facilities may be controlled from outside the cell and may be in the floor. Water need not be available in the cells, but water shall be accessible from staff upon request.

**50.8(5) Exercise areas.**

*a.* This paragraph shall apply to all jails constructed on or before July 1, 2008. Exercise areas may be indoor or outdoor exercise areas and shall contain 15 square feet per prisoner for the maximum number of prisoners expected to use the space at one time, but not less than 500 square feet of unencumbered space. Segregation units may have individual exercise areas containing a minimum of 180 square feet of unencumbered space. Exercise areas shall provide opportunity for adequate exercise in accordance with 50.18(1)“c.” Exercise areas shall not be the same as dayrooms.

*b.* This paragraph shall apply to all jails which are of new construction and to all major remodeling or reconstruction after July 1, 2008. Exercise areas may be indoor or outdoor exercise areas and shall contain 15 square feet per prisoner for the maximum number of prisoners expected to use the space at one time, but not less than 500 square feet of unencumbered space. Segregation units may have individual exercise areas containing a minimum of 180 square feet of unencumbered space. Exercise areas shall have a minimum ceiling height of 18 feet. Exercise areas shall provide opportunity for adequate exercise in accordance with 50.18(1)“c.” Exercise areas shall not be the same as dayrooms.

**50.8(6)** The facility shall be designed to admit natural light and to give access to outside viewing by prisoners where practical.

**50.8(7)** The facility shall be designed and constructed so that prisoners may be segregated according to existing laws and regulations.

**50.8(8)** Except in emergency situations, no housing unit shall house more prisoners than its rated capacity.

**50.8(9)** All hinged doors serving as required exits shall swing with exit traffic.

**201—50.9(356,356A) Fire safety and emergency evacuation.**

**50.9(1) Approval of building plans.** All new construction or major remodeling plans shall be approved by the state fire marshal prior to commencement of construction.

**50.9(2) Compliance with fire marshal rules.** No jail shall be occupied by a prisoner unless the state fire marshal or qualified local fire prevention authority has issued a certificate of inspection within the last 18 calendar months documenting that the jail complies with the fire safety standards for jails included in administrative rules promulgated by the state fire marshal. Jails may be inspected by the fire marshal, or by personnel of local fire departments deemed by the fire marshal qualified to conduct inspections, on a schedule determined by the fire marshal. The state jail inspection unit of the department of corrections, a jail administrator, or the chief executive of an agency that administers a jail may request that the state fire marshal inspect a jail for compliance with fire safety standards. If the state fire marshal finds that a jail is not in substantial compliance with fire safety standards based on such an inspection, the state fire marshal may require the jail administrator to submit to the fire marshal a plan of correction of violations of these standards. The director of the Iowa department of corrections may initiate proceedings to close the jail if the jail does not comply with the plan of correction.

**50.9(3) Evacuation plan.** The administrator of each jail shall prepare a written plan for emergency evacuation of the facility in the event of fire or other disaster. This plan shall include security arrangements and one or more alternate housing arrangements for displaced prisoners. All personnel employed in the facility shall be thoroughly familiar with this plan and relevant portions thereof shall be conspicuously posted. Evacuation drills shall be practiced or simulated by all staff on at least an annual basis and a record thereof shall be maintained according to subrule 50.22(10), Iowa Administrative Code.

**50.9(4) Release of prisoners.**

*a.* There shall be a reasonable expectation of the prompt removal of prisoners in the event of a life-threatening situation. Keys for all locks necessary for emergency exit shall be readily accessible and clearly identifiable with cell and door locks.

*b.* There shall be at least one full set of jail keys, other than those regularly used, stored in a safe place accessible only to appropriate persons, for use in the event of an emergency.

**50.9(5) Fire extinguishers.** All jails shall be equipped with fire extinguishing equipment approved and located in accordance with standards established by the state fire marshal by administrative rule.

Fire extinguishers shall be tested at least annually to ensure they remain in operative condition. A record of such checks shall be maintained.

**50.9(6) *Emergency lighting.*** All exits shall be equipped with independent emergency lighting sources. All corridors and passage aisles shall be illuminated by independent emergency lighting sources. Lighting shall be arranged to ensure no area will be left in darkness.

**50.9(7) *Required exits.*** Where exits are not immediately accessible from an open floor area, safe and continuous passage aisles or corridors leading directly to every exit shall be maintained and shall be so arranged as to provide access for each prisoner to at least two separate and distinct exits from each floor. Passage aisles or corridors shall be kept clear. A locked exit may be classified as an emergency exit only if necessary keys to locked doors are readily available. Elevators shall not be counted as required exits.

**50.9(8) *Fire alarms.*** A means of fire detection utilizing equipment of a type meeting requirements established by the state fire marshal shall be installed and maintained. These alarms shall be ceiling-mounted if possible and shall be located and protected from prisoner access. The detection equipment shall be battery-operated or constructed as to continue operating during a power failure. Battery-operated systems shall be tested monthly. Electronic systems shall be tested at least annually. A record of test dates and results shall be maintained according to subrule 50.22(10), Iowa Administrative Code.

**50.9(9) *Heating appliances.*** Heating appliances and water heaters shall not be located along the path of required exits.

**50.9(10) *Hinged doors.*** All hinged doors serving as required exits from an area designed for an occupancy in excess of 50 persons, or as part of a major remodeling project or as part of new construction, shall swing with exit traffic.

**50.9(11) *Mattresses.*** Only fire-resistant mattresses of a type that will not sustain a flame and certified by an independent testing laboratory and that meet the standards established by the state fire marshal shall be used in jails. Mattresses that are ripped, excessively cracked or which contain large holes shall be replaced. Pillows shall be replaced when torn or excessively cracked.

**50.9(12) *Sprinkler heads.*** If installed, sprinkler heads accessible to prisoners not under direct supervision must be of the weight-sensitive type, be protected with a sleeve that would hamper the tying of material on the sprinkler head, or be recessed into the wall or ceiling.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

## **201—50.10(356,356A) Minimum standards for jail personnel.**

**50.10(1) *Requirements for employment.*** No person shall be recruited, selected or appointed to serve as a jail administrator or jailer unless the person:

- a. Is 18 years of age or older.
- b. Is able to read and write in English.
- c. Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted of local, state and national fingerprint files.
- d. Is not by reason of conscience or belief opposed to the use of force, when appropriate or necessary to fulfill the person's duties.
- e. Has the ability to perform the essential elements of the position as defined in department job specifications.
- f. Is an appropriate candidate for employment as demonstrated by qualified psychological screening.
- g. Rescinded IAB 11/23/05, effective 12/28/05.

**50.10(2) *Minimum standard for retention.*** No employee shall be retained who has demonstrated inappropriate action beyond a reasonable degree, who is not psychologically fit for jail employment, or who has repeatedly failed to observe these rules.

**50.10(3) *Conflict of interest.*** No person working in a jail shall transact any business with any prisoner nor shall any person working in a jail arrange through another party any business transaction with a prisoner. The jail shall have a written code of ethics that the jail provides to all employees. At a minimum, the code shall:

- a. Prohibit staff from using their official positions to secure privileges for themselves or others.
- b. Prohibit staff from engaging in activities that constitute a conflict of interest.

**201—50.11(356,356A) Training for jail personnel.**

**50.11(1) Initial orientation.** Except in an emergency situation, all persons performing jail duties and dispatchers subject to performing jail duties within the confines of the jail shall meet the following requirements, and the provision of this information and training shall be documented:

- a. The individual shall be fully knowledgeable of the administrative rules referring to jail standards.
- b. The individual shall be fully knowledgeable of jail rules, written policies and procedures as adopted by the jail administrator.
- c. The individual shall have been given specific orientation with respect to a prisoner's rights during confinement and procedures adopted to ensure those rights.
- d. If the individual is to have access to a firearm at any time, the individual shall hold a valid permit to carry weapons issued under the authority of Iowa Code chapter 724. The individual shall be professionally trained and qualified in the use of any firearm, electric restraint control device, and chemical control agents prior to use in connection with the individual's duties at the jail.
- e. The jail administrator shall record by log sheet the signature(s) of all jailers and jail supervisors attesting that they have full knowledge of the administrative rules referring to jail standards and the written policies and procedures governing the jail's operation.
- f. The individual shall have been instructed in the use of required firefighting equipment and the fire and emergency evacuation plan.
- g. All staff who administer medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.

**50.11(2) Training documented.** All jailers and jail administrators shall meet and document the completion of all training requirements as specified by the Iowa law enforcement academy training standards as found in 501—9.1(80B) and 501—9.2(80B), Iowa Administrative Code. The jail administrator shall record by log sheet the signature(s) of all persons attending the training.

**50.11(3) First aid.** At least one staff member on duty at the facility shall be currently trained in first aid (or the equivalent) and CPR.

This rule is intended to implement Iowa Code section 80B.11A.

**201—50.12(356,356A) Standard operating procedures manual.** Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each jail shall establish and the jail administrator shall ensure compliance with a standard operating procedures manual to include the following administrative rules: subrules 50.2(5), 50.2(6), 50.4(11), 50.9(3), 50.9(4), 50.10(1), 50.10(2), 50.10(3), 50.11(1) and rules 201—50.13(356,356A) to 201—50.22(356,356A) as noted. The following standards do not require written policy: 50.13(2)“c”(3), 50.15(4), 50.16(4), and 50.16(8).

**201—50.13(356,356A) Admission/classification and security.**

**50.13(1) Admission and classification.**

- a. No person shall be confined or released from confinement without appropriate process or order of court.
- b. With the exception of incidental contact under staff supervision, the following classes of prisoners shall be kept separate by architectural design barring conversational and visual contact from each other:
  - (1) Juveniles and adults (pursuant to Iowa Code section 356.3).
  - (2) Females from males (exception—alternative jail facilities) (pursuant to Iowa Code section 356.4).
- c. The following shall be kept separate whenever possible:
  - (1) Felons from misdemeanants.

(2) Pretrial prisoners from sentenced prisoners.

(3) Witnesses from prisoners charged with crimes.

*d.* The following shall be kept physically separated:

(1) Prisoners of whom violence is reasonably anticipated.

(2) Prisoners who are a health risk to others.

(3) Prisoners of whom sexually deviant behavior is reasonably anticipated.

(4) Prisoners likely to be exploited or victimized by others.

*e.* Detention of juveniles shall be pursuant to Iowa Code section 232.22.

*f.* All staff involved in the booking process or the supervision of prisoners shall be trained in suicide prevention. At the time of booking, an attempt shall be made (either by observation for marks or scars or direct questioning of the prisoner) to determine if the prisoner is suicidal. The following questions, or others of equal meaning, shall be incorporated into the booking process with appropriate documentation to aid in suicide prevention:

(1) Does the prisoner show signs of depression?

(2) Does the prisoner appear overly anxious, afraid, or angry?

(3) Does the prisoner appear unusually embarrassed or ashamed?

(4) Is the prisoner acting or talking in a strange manner?

(5) Does the prisoner appear to be under the influence of alcohol or drugs?

(6) Does the prisoner have any scars or marks which indicate a previous suicide attempt?

In all cases, the following questions will be asked of the prisoner:

Have you ever tried to hurt yourself?

Have you ever attempted to kill yourself?

Are you thinking about hurting yourself?

*g.* Housing for prisoners with disabilities shall be designed for their use, or reasonable accommodations shall be provided for the prisoners' safety and security.

*h.* Jail personnel shall ask each prisoner within 24 hours of the prisoner's incarceration if the prisoner is a military veteran. If so, jail personnel shall advise the prisoner that the prisoner may be entitled to a visit from a veteran service officer to determine if veteran services are required or available and, within 72 hours, shall provide the prisoner with contact information for the county commission of veteran affairs and provide the prisoner the opportunity to contact the county commission of veteran affairs to schedule a visit from a veteran service officer.

**50.13(2) *Security and control.*** The jail administrator shall develop and implement written policies and procedures for the jail which provide for the control of prisoners and for the safety of the public and the jail staff. The policy and procedures shall include:

*a. Supervision of prisoners.*

(1) Twenty-four-hour supervision of all prisoners shall be provided pursuant to Iowa Code section 356.5(6).

(2) When staff is not within the confinement area of the jail, a staff person shall be in a position to hear prisoners in a life-threatening or emergency situation; or a calling device to summon help will be provided. By policy and practice there shall be a means of ensuring that appropriate personnel will be available on a 24-hour basis to respond to an emergency including, but not limited to, fire, assaults, suicide attempts, serious illness, and to preserve order, within a reasonable time period.

(3) At least hourly, personal observation of individual prisoners shall be made and documented. Prisoners considered to be in physical jeopardy because of physical or mental condition, including apparently intoxicated persons, as indicated by the medical history intake process and by personal observation, shall be checked personally at least every 30 minutes until the condition is alleviated. A CCTV-audio monitoring system may supplement but shall not replace personal observations. In order to use a CCTV-audio monitoring system, the following requirements must be met: CCTV and audio must be operational at all times. Visual and audio must be clear and distinct. Observation of shower and restroom activities shall be at the discretion of the jail administrator.

(4) No employee or visitor of one sex shall enter a housing unit occupied by the other sex unless advance notice has been provided except in case of an emergency (does not apply to alternative jail facilities). Advance notice may be provided at the time of orientation.

(5) When females are housed in the jail, at least one female staff member shall be on duty in the jail at all times, in accordance with Iowa Code section 356.5(6) (does not apply to alternative jail facilities).

(6) All juveniles arrested for intoxication due to substance abuse shall be personally observed on a continuous basis throughout the period of detention. The activities of juveniles arrested for crimes other than the above shall be monitored at all times, and the juvenile shall be observed by means of personal supervisory checks at no more than 30-minute intervals.

*b. Weapons.* Except in an emergency situation, no weapons shall be allowed in an area occupied by prisoners.

*c. Searches.*

(1) All prisoners and property entering or leaving the jail shall be thoroughly searched; searches of persons charged with a simple misdemeanor shall follow provisions of Iowa Code section 804.30. The prisoner's name or identification number shall be affixed to the property or storage space. Receipts shall be made for property taken from prisoners at the time of admission and returned to prisoners at the time of release.

(2) All persons entering a jail may be searched for contraband. Persons may be denied admission if they refuse to consent to a required search.

(3) A search notice shall be posted in a conspicuous place (no policy required).

(4) Prisoner rules shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.

(5) Random, unannounced, and irregular searches of areas accessible to prisoners shall be conducted for contraband and weapons.

*d. Key control.* Jail keys shall be stored in a secure area when not in use. There shall be at least one full set of jail keys, separate from those in use, stored in a safe place accessible only to designated jail personnel for use in the event of an emergency. The jail administrator will identify those persons who may have access to keys.

*e. Facility security.*

(1) All areas of the jail shall be inspected regularly and frequently and kept clear of large posters, pictures and articles of clothing that obstruct the view of prisoners by jail staff.

(2) All jail locks, doors, bars, windows, screens, grilles and fencing shall be inspected on at least a monthly basis. Any damaged or nonfunctioning equipment or fixtures shall be reported to the jail administrator in writing. The jail administrator shall ensure prompt repair of any damaged or nonfunctioning equipment or fixture.

(3) The jail administrator shall develop written policy and procedures for the movement and transportation of prisoners outside the secure area of the jail. The policy shall require procedures that will ensure the safety of the jail staff and the public and prevent prisoner escape. The policy shall provide procedures for movement of prisoners for medical treatment and to and from the courts and other facilities. The classification and security risk of the prisoner to be moved will determine the number of staff required and the type of restraints to be used, if any.

(4) The jail administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: bomb threats, riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plans shall be made available to all applicable personnel and reviewed by jail staff at least annually and updated as needed.

*f. Restraint devices.* The jail administrator shall have a written policy on restraint devices. Restraint devices shall not be applied as punishment. Restraint devices shall be used only when a prisoner is a threat to self or others or jeopardizes jail security. There shall be defined circumstances under which supervisory approval is needed prior to application of restraints. Restraint devices shall not be applied for more time than is necessary to alleviate the condition requiring the use of the restraint device. While restrained, prisoners shall be either clothed or covered in a manner that maximizes

prisoner privacy. Four/five-point restraints shall be used only when other types of restraints have proven ineffective. If prisoners are restrained in a four/five-point position, the following minimum procedures shall be followed:

- (1) Observation by staff shall be continuous. (A CCTV system may be used.)
- (2) Personal visual (non-CCTV) observation of the prisoner and the restraint device application shall be made at least every 15 minutes.
- (3) Restraint guidelines shall include consideration of an individual's physical and health condition, such as body weight.
- (4) All decisions and actions shall be documented.

[ARC 9578B, IAB 6/29/11, effective 8/3/11]

## **201—50.14(356,356A) Cleanliness and hygiene.**

### **50.14(1) Housekeeping.**

*a.* The jail shall be kept clean and sanitary. Toilets, wash basins, showers and other equipment throughout the facility shall be maintained in good working order. Walls, floors and ceilings shall be well maintained.

(1) Unless cleaning is done by staff, necessary cleaning equipment shall be provided to prisoners. Cleaning equipment shall be removed from the cell and dayroom areas when cleaning is completed.

(2) The jail shall be maintained in a pest-free condition. Persons spraying chemicals shall be certified by the Iowa department of agriculture and land stewardship. Prisoners and staff shall not be directly exposed to the chemicals being used.

*b.* The jail shall have a sharps disposal container for razors and needles. The facility shall be equipped to handle disposal of contaminated or hazardous waste according to universal health precautions.

**50.14(2) Clothing, bedding, and hygiene items.** Prisoners held in excess of 24 hours shall be provided sanitary bedding and linens sufficient to ensure comfort under existing temperature conditions. These items may be withheld by the jail administrator if deemed necessary pursuant to subrule 50.21(5). A standard issue shall include:

- a.* Toilet articles necessary for daily personal hygiene.
- b.* Institutional clothing may be issued.
- c.* If, upon admission to a jail with an average daily population exceeding ten persons, it is determined that the prisoner will be held longer than 24 hours, facility-provided clothing shall be issued.
- d.* The laundry means and schedule shall be adequate to meet the daily needs of the prisoners. Prisoners shall receive clean linens and clothing no less than weekly.

### **50.14(3) Personal hygiene.**

*a.* For sanitation and health reasons, prisoners shall be required to keep themselves clean at all times.

*b.* Unless medically exempted, all prisoners to be held over 24 hours shall be required to shower or bathe.

*c.* Prisoners may be required to shave or cut their hair only for sanitation.

*d.* Jail personnel shall establish procedures for prisoner hair care.

*e.* The sharing of instruments which are subject to blood contamination, such as nonelectric razors and toothbrushes, is prohibited. Electric razors properly sterilized under medically approved conditions may be shared.

[ARC 9578B, IAB 6/29/11, effective 8/3/11]

**201—50.15(356,356A) Medical services.** The jail administrator shall establish a written policy and procedure to ensure that prisoners have the opportunity to receive necessary medical attention for the prisoners' objectively serious medical and dental needs which are known to the jail staff. A serious medical need is one that has been diagnosed by a physician or physician assistant as requiring treatment or is one that is so obvious that even a lay person would easily recognize the necessity for a physician's or physician assistant's attention. The plan shall include a procedure for emergency care. Responsibility for the costs of medical services and products remains that of the prisoner. However, no prisoner will be

denied necessary medical services, dental service, medicine or prostheses because of a lack of ability to pay. Medical and dental prostheses shall be provided only for the serious medical needs of the prisoner, as determined by a licensed health care professional. Cosmetic or elective procedures need not be provided.

**50.15(1) *Medical resources.*** Each jail shall have a designated licensed physician, licensed osteopathic physician, physician assistant or medical resource, such as a hospital or clinic staffed by licensed physicians, licensed osteopathic physicians or physician assistants, designated for the medical supervision, care and treatment of prisoners as deemed necessary and appropriate. Medical resources shall be available on a 24-hour basis.

**50.15(2) *Trained staff.***

*a.* All staff who administer medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.

*b.* At least one staff member on duty at the jail shall be currently trained in first aid (or the equivalent) and CPR.

**50.15(3) *Prisoner involvement.*** No prisoner shall be involved in any phase of delivery of medical services.

**50.15(4) *First-aid kits.*** A first-aid kit approved by qualified medical personnel shall be available to staff (no policy required).

**50.15(5) *Chemical control agents.*** A prisoner affected by a chemical control agent shall be offered a medical examination and appropriate treatment as soon as reasonable.

**50.15(6) *Screening upon admission.***

*a.* Any person who is obviously injured, ill or unconscious shall be examined by qualified medical personnel before being admitted to a jail.

*b.* Prisoners suspected of having a contagious or communicable disease shall be separated from other prisoners until examined by qualified medical personnel.

*c.* As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the jail. The intake procedure shall include screening for potential self-injury or potential suicide. Jail staff with actual knowledge that there is a substantial risk that a prisoner intends to commit suicide shall take reasonable measures to abate that risk. The jail shall have a written suicide prevention plan. Essential elements of the plan shall include annual training to recognize the potential for suicide, communication between staff, appropriate housing and intervention procedures.

*d.* During times when there is no means of immediate access to the district court, a person arrested on a charge constituting a simple misdemeanor and believed by the arresting officer/agency to be mentally ill, and because of that illness is likely to physically injure the person's self or others, shall be admitted to the jail only after the arresting officer/agency has demonstrated a reasonable effort to comply with the emergency hospitalization procedure, as provided in Iowa Code section 229.22. The jail shall have a written plan to provide prisoners access to services for the detection, diagnosis and treatment of mental illness. The plan shall include a mental health screening process at admission

*e.* Prisoners shall be provided with information on how they can obtain necessary medical attention, and the agency's policy and procedure shall also reflect this.

**50.15(7) *Medication procedures.***

*a.* Written policies and procedures pertaining to providing medication shall be established.

*b.* All prescription medicine shall be securely stored and inventory control practiced. Inventory control shall include documentation of all medication coming into the jail and the amount returned or destroyed when a prisoner is released.

*c.* A written procedure for recording the taking or administering of all medications shall be established.

*d.* Prescription medication, as ordered by a licensed physician, licensed osteopathic physician, physician assistant or licensed dentist, shall be provided in accordance with the directions of the prescribing physician, licensed osteopathic physician, physician assistant or dentist. Prisoners with medication from a personal physician, osteopathic physician, physician assistant or dentist may be

evaluated by a physician, osteopathic physician, physician assistant or dentist selected by the jail administrator to determine if the present medication is appropriate.

**50.15(8) *Medical records.*** A separate medical record shall be maintained for each prisoner receiving medical care. The record shall include the illness being treated, medication administered, special diets required, medical isolations and the name of the attending health professional or institution. The record may be kept in the prisoner's file jacket but must be labeled confidential.

**50.15(9) *Medication storage.***

*a.* Prisoners' medications shall be stored at the proper temperature, as defined by the following terms:

(1) Room temperature: temperature maintained between 15 degrees centigrade (59 degrees Fahrenheit) and 30 degrees centigrade (85 degrees Fahrenheit).

(2) Cool: temperature between 8 degrees centigrade (46 degrees Fahrenheit) and 15 degrees centigrade (59 degrees Fahrenheit).

(3) Refrigerate: temperature that is thermostatically maintained between 2 degrees centigrade (36 degrees Fahrenheit) and 8 degrees centigrade (46 degrees Fahrenheit).

(4) All medication required to be "cool" or "refrigerated" shall be stored in a separate refrigerator or in a separate locked container within a refrigerator that is used for other purposes.

*b.* Any medications bearing an expiration date may not be administered beyond the expiration date.

*c.* Expired drugs or drugs not in unit dose packaging, whose administration had been discontinued by the attending physician or physician assistant, shall be destroyed by the jail administrator or designee in the presence of a witness. A record of drug destruction shall be made in each prisoner's medical record. The record shall include the name, the strength and the quantity of the drug destroyed, and the record shall be signed by the jail administrator or designee and by the witness.

*d.* Medications dispensed by a pharmacy in unit dose packaging may be returned to the dispensing pharmacy pursuant to board of pharmacy rule 657—23.15(124,155A).

*e.* Jails utilizing unit dose packaging shall have written policies and procedures providing for the return of drugs so packed to the issuing pharmacy. Policy shall include proper record keeping of disposal. [ARC 6905C, IAB 2/22/23, effective 3/29/23]

#### **201—50.16(356,356A) General food service requirements.**

**50.16(1) *Prisoner being held.*** If a prisoner is held over a meal period, a meal of adequate nutrition shall be provided.

**50.16(2) *Daily meals.*** The three meals provided for each 24-hour duration shall be served at reasonable and proper intervals; at least one meal shall be a hot meal. Food must be served at the proper temperature; hot foods shall be reasonably hot and cold foods reasonably cold.

**50.16(3) *Time of serving.*** Meals shall be served at approximately the same time every day.

**50.16(4) *Documentation.*** The facility shall document that its food service meets or exceeds nationally recommended minimum dietary allowances for basic nutrition for appropriate age groups. Dietary guidelines meeting the above requirements shall be certified by a qualified nutritionist or dietitian (no policy required).

**50.16(5) *Medical diets.*** Special diets as prescribed by a physician or physician assistant shall be followed and documented. The physician or physician assistant who prescribes the special diet shall specify a date on which the diet will be reviewed for renewal or discontinuation. Unless specified by the prescribing physician or physician assistant, a certified dietitian shall develop the menu.

**50.16(6) *Religious requests.*** When a special diet is requested by a prisoner as part of the prisoner's religious beliefs, the facility shall meet that need, unless the facility can demonstrate that its refusal does not impose a substantial burden on the exercise of the prisoner's religion or that its refusal furthers some compelling interest and is the least restrictive means of furthering that interest.

**50.16(7) *Punishment.*** Deviation from normal feeding procedures shall not be used as punishment.

**50.16(8) *Inspection of facilities of outside food service providers.*** If food service is provided by outside sources, only a facility with a food establishment license or those required to undergo inspection

by other statutes shall be utilized to provide these services. The transfer of food shall be done under sanitary conditions (no policy required).

[ARC 6905C, IAB 2/22/23, effective 3/29/23]

**201—50.17(356,356A) In-house food services.**

**50.17(1)** Food preparation areas shall be clean and sanitary in accordance with state health standards regulating institutional or food establishment operations.

**50.17(2)** All food products shall be stored or refrigerated in compliance with state health standards governing institutional or food establishment operations.

**50.17(3)** Dishes, utensils, pans and trays shall be sanitized after use in accordance with state health standards for food establishments or institutions.

**50.17(4)** Staff shall serve or supervise the serving of all meals. Food handlers must be clean and free of illness or disease.

**201—50.18(356,356A) Prisoner activities.**

**50.18(1) Exercise.** Prisoners held beyond seven days and not leaving the jail pursuant to Iowa Code section 356.26 shall be offered exercise time.

*a.* A minimum of two one-hour exercise sessions shall be offered during each full calendar week. Playing board games or cards or reading is recreation and is not considered exercise. A record of exercise sessions shall be maintained according to subrule 50.22(15).

*b.* Restrictions. Exercise requirements may be restricted by disciplinary action.

*c.* Exercise areas. An exercise area outside the cell shall be available. Such area must provide opportunity for adequate exercise. Corridors and hallways must remain clear of equipment or material and must provide unimpeded access to exits.

*d.* Suspension of outdoor exercise. Outdoor exercise may be suspended during inclement weather. Appropriate clothing shall be provided for exercise during winter months.

**50.18(2) Religion.** All prisoners shall be afforded a reasonable opportunity to pursue their religious faith. Any infringement upon the opportunity to pursue one's faith must further some compelling interest and must be the least restrictive means of furthering that interest.

The jail administrator or designee may plan, direct and supervise all aspects of a religious program, including approval and training of both laypersons and clergy persons ministering faiths represented in the prisoner population.

**50.18(3) Reading material.** A reasonable quantity and variety of reading material shall be made available to prisoners.

*a.* Access to reading material from an outside source may be restricted to unused material sent directly from the publishing source.

*b.* Material deemed to be a threat to security or safety within the jail may be denied distribution.

*c.* Obscene material, as described in Iowa Code section 728.1, may be prohibited.

*d.* When a prisoner is denied access to a publication, the jail administrator shall inform the prisoner of that denial in writing and shall explain, in writing, the reason(s) for denial.

**50.18(4) Discrimination.** Prisoner activities, programs and services shall be available to prisoners with disabilities.

**201—50.19(356,356A) Communication.**

**50.19(1) Prisoner mail.**

*a.* Prisoners held beyond 24 hours shall be furnished a reasonable amount of writing materials upon request. Jail officials may prohibit a prisoner from corresponding with a person who states in writing that the person does not want to correspond with the prisoner. This does not include a "prior approval" list.

*b.* A reasonable amount of postage shall be provided to indigent prisoners held beyond 24 hours for communication with the courts and for at least two letters per week of a personal nature when other means of communication are not available.

c. General correspondence may be opened and inspected; it may be read for security reasons if the prisoner is notified of this procedure.

d. Privileged correspondence if so marked may be opened only in the presence of the prisoner and then only to detect the presence of contraband; it may not be read except by the prisoner. Privileged correspondence is defined as incoming and outgoing mail to or from:

- (1) An attorney;
- (2) A judge;
- (3) The governor of Iowa;
- (4) The ombudsman office;
- (5) A member of the state or federal legislature.

e. Written policy, procedure, and practice require that, excluding weekends and holidays, incoming and outgoing letters be held for no more than 24 hours and packages be held for no more than 48 hours for inspection before delivery to the prisoner or post office.

**50.19(2) Telephone calls upon arrest.**

a. Prisoners shall be permitted telephone access to their family or an attorney, or both, without unnecessary delay after arrest at no charge if made within the local calling area as required by Iowa Code section 804.20.

b. Policy and procedures shall be developed to govern prisoner telephone calls. The procedure shall provide for the handling of emergency calls.

c. Prisoners not in segregation status for discipline shall have reasonable access to telephones beyond the requirements of Iowa Code section 804.20.

**50.19(3) Attorneys and ministers.** Attorneys and ministers shall be permitted to visit prisoners upon the request of the prisoner at reasonable hours if security and daily routine are not unduly interrupted.

**50.19(4) General visitation.**

a. All prisoners in normal status shall be allowed reasonable visitation.

b. Rules shall specify who is allowed to visit and when and how often visitors are allowed.

c. Jail staff shall document the date and time of visit, name and address of each person visiting, and name of prisoner visited. Computerized logs are acceptable.

d. A visit may be denied if reasonable suspicion exists that the visit might endanger the security of the facility. A record shall be made of such denial and the reason(s) therefor.

**50.19(5) Detaining non-U.S. citizens.** When non-U.S. citizens are detained, they shall be advised of the right to have their consular officials notified or the nearest consular officials shall be notified of the detention, whichever is required by the Vienna Convention. Consular officials shall be given access to non-U.S. citizens in jail and shall be allowed to provide consular assistance. When a jail administrator becomes aware of the death of a non-U.S. citizen, consular officials shall be notified.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

**201—50.20(356,356A) Access to the courts.** Prisoners who do not have an attorney shall have access to the legal materials the jail decides to provide, in order to facilitate the preparation of legal documents that directly or collaterally attack the prisoner's sentence or that challenge the conditions of the prisoner's confinement.

**201—50.21(356,356A) Discipline and grievance procedures.**

**50.21(1)** No prisoner shall be allowed to have authority or disciplinary control over another prisoner.

**50.21(2)** The use of physical force by staff shall be restricted to instances of justifiable self-protection, the protection of others or property, the prevention of escapes or the suppression of disorder, and then only to the degree necessary to overcome resistance. Corporal punishment is forbidden.

**50.21(3)** The following information shall be made available to all prisoners and explained to any prisoner unable to read English:

a. A set of rules (including sanctions) and regulations pertaining to the conduct of persons in custody.

- b. What services are available to them.
- c. A prisoner grievance procedure which includes at least one level of appeal. A jail may limit the use of the grievance process in order to make sure that it is not abused.

**50.21(4)** Prisoners who have allegedly violated jail rules shall be provided information pertaining to the handling of disciplinary hearings consistent with the due process rights of the accused. This information shall include the following:

- a. Notice of charges and hearing.
- b. A description of the hearing process. The jail policy and procedures manual shall contain the following:

(1) Written guidelines for resolving minor prisoner infractions which include a written statement of the rule violated and a hearing and decision within seven days, excluding weekends and holidays, by a person not involved in the rule violation. The prisoner may waive the hearing.

(2) A procedure to refer violations of criminal law to the appropriate criminal justice agency.

(3) A policy which requires staff members to prepare a disciplinary report and forward it to a designated staff person. Disciplinary reports shall include the following information:

1. Specific rule(s) violated;
2. A statement of the charge;
3. Any unusual prisoner behavior;
4. Any staff witnesses;
5. An explanation of the event that includes who was involved, what transpired, and the time and location of the occurrence;
6. Any physical evidence and its disposition;
7. Any immediate action taken, including the use of force.

(4) A policy that requires an impartial investigation to begin within 24 hours of the time the violation is reported and be completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation.

(5) A policy and procedure that provides for prehearing detention of prisoners who are charged with a rule violation. The facility administrator or designee shall review the prisoner's prehearing status within 72 hours.

(6) A policy that prisoners charged with a rule violation receive a written statement of the charge(s), including a description of the incident and specific rule(s) violated. The prisoner shall be given the information at least 24 hours prior to the disciplinary hearing. The hearing may be held in less than 24 hours with the written consent of the prisoner.

(7) A policy and procedure that allows the prisoner to be present at the hearing, unless the prisoner waives that right in writing or is a threat to the security and safety of the facility. Prisoners may be excluded during testimony. Any prisoner's absence shall be documented.

(8) A policy that provides for the disciplinary hearing to be conducted no later than seven days, excluding weekends and holidays, following the report of the alleged rule violation.

(9) A policy that provides for postponement or continuance of the disciplinary hearing for a reasonable period and for good cause. Reasons for postponement or continuance shall be documented.

(10) A policy and procedure that provides for an impartial person or panel of persons to conduct the disciplinary hearing. A record of the proceedings shall be made and maintained for at least two years.

(11) A policy and procedure that allows prisoners an opportunity to make a statement and present documentary evidence at the hearing and to call witnesses on their behalf unless calling witnesses creates a threat to the security or safety of the facility. The reasons for denying such a request shall be documented.

(12) A policy and procedure that allows a staff member or agency representative to assist prisoners at disciplinary hearings. A representative shall be appointed when it is apparent that a prisoner is not capable of collecting and presenting evidence on the prisoner's own behalf.

(13) A policy that disciplinary committee decisions are based solely on information obtained in the hearing process.

(14) A policy and procedure to ensure that a written report is made of the decision and the supporting reasons and that a copy is given to the prisoner. The hearing record and documents shall be kept in the prisoner's file.

(15) A policy that requires the jail administrator or designee to review all disciplinary hearings and dispositions to ensure conformity with the jail policy and procedures.

c. An explanation of the appeal process. The jail policy and procedure manual shall contain a policy and procedure to advise the prisoner that the prisoner may appeal the decision to the jail administrator or designee within 24 hours. The administrator or designee shall affirm or reverse the decision of the disciplinary committee as soon as possible but within 15 days, excluding weekends and holidays.

**50.21(5)** Deprivation of clothing, bedding, or hygienic supplies shall not be used as discipline or punishment. These items may be withheld from any prisoner who the staff reasonably believes would destroy such items or use them as weapons, for self-injury or to aid in escape.

**201—50.22(356,356A) Records.** The following records shall be maintained by the jail administrator for two years unless a different period is specified:

**50.22(1)** *Jail calendar.* This record shall contain information as required by Iowa Code section 356.6.

**50.22(2)** *Visitor registration.* This record shall contain the name and address of the person visiting; name of prisoner visited; and the date, time and duration of the visit.

**50.22(3)** *Jail inspection records.* Jail inspection records shall contain the following and be maintained for a minimum period of two years:

a. Fire marshal's certificates.

b. Written reports received from all persons doing official inspections of the jail.

**50.22(4)** *Medical history intake form.* Notation of injury upon admission shall be included.

**50.22(5)** *Records of medical care.*

**50.22(6)** *Injury reports.* Copies of all reports of investigations relating to injuries within the facility shall be maintained by the jail administrator in a separate injury file or referenced in the prisoner file by log for a period of five years.

**50.22(7)** *Disciplinary records.*

**50.22(8)** *Property receipts.* Property receipts as required by Iowa Code section 804.19 shall be completed and distributed as required.

**50.22(9)** *Menu records.* This record shall include letters of documentation issued by a qualified dietitian.

**50.22(10)** *Fire and disaster evacuation plan and record(s) of required fire drills.*

**50.22(11)** *Records of staff training.*

**50.22(12)** *Disposition of medication.* A record shall be kept of the disposition of prescribed medication not taken by a prisoner.

**50.22(13)** *Supervisory checks.* A record shall be made to document all required supervisory checks of prisoners.

**50.22(14)** *Incident reports.* Records shall be made to document the following:

a. Use of force;

b. Suicide/suicide attempts;

c. Threats to staff, staff assaults, escapes, fires, prisoner abnormal behavior, any verbal or nonverbal references to suicide and self-mutilation.

d. The state jail inspection unit of the department of corrections shall be notified within 24 hours of any death, attempted suicide, fire, escape, injury to staff or prisoners from assaults, or use of force and prisoner self-injuries. A copy of the investigative reports and other records shall be given to the state jail inspector upon request.

**50.22(15)** *Exercise documentation.* A record shall be kept relative to date, time and length of exercise periods offered to specific prisoners, cell blocks, tiers, or any other type of cell grouping or housing unit.

**201—50.23(356,356A) Alternative jail facilities.** Rescinded **ARC 3929C**, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter.

**201—50.24(356,356A) Nonsecure holds for juveniles.**

**50.24(1) Standards for nonsecure hold areas.** The area to be used to detain the juvenile must be an unlocked area such as a lobby, office or other open room. Additionally, the following minimum procedures must be followed:

- a. The juvenile is not physically secured to any stationary object.
- b. The juvenile is under continuous visual supervision.
- c. The juvenile has access to bathroom facilities.
- d. A meal or meals shall be provided at usual meal times.

**50.24(2) Supervision of juveniles in nonsecure hold.** Juveniles in nonsecure hold status (see Iowa Code sections 232.19(2) and 232.222(2)) shall have continuous visual supervision by a qualified adult. The jail administrator may contract with an outside agency to perform supervisory functions. Persons performing juvenile supervisory functions must:

- a. Be at least 18 years of age.
- b. Have received a physical prior to employment.
- c. Perform at a staff-to-prisoner ratio that will ensure a safe environment for both the juvenile(s) and the staff.
- d. Report any knowledge of child abuse to mandatory child abuse reporters.
- e. Have successfully completed a child abuse and criminal background check.

**50.24(3) Prohibited acts.** Each nonsecure site must develop a policy of posted orders which protects juveniles against neglect; exploitation; degrading punishment such as corporal punishment, verbal abuse, threats, or derogatory remarks about the juvenile or the juvenile's family; binding or tying to restrict movement; enclosing the juvenile in a confined space such as a closet, locked room, or similar cubicle; and deprivation of meals.

**50.24(4) Attendant nonsecure area operating procedures.**

- a. Attendant shall make certain the juvenile is aware of the policies of the nonsecure holding area.
- b. The personal effects of the juvenile shall be placed in a safe, secure place. A property receipt shall be issued to the juvenile.
- c. All items given to the juvenile are subject to being searched.
- d. Attendant shall pat search juvenile.

**50.24(5) Care and treatment.**

a. *Medical.*  
(1) No juvenile shall be held who is obviously injured, is obviously physically or mentally ill, or in the judgment of the arresting officer is under the influence of drugs or intoxicated from the use of alcohol to the point of needing medical attention without first being examined by a medical practitioner.

(2) In an emergency situation or when the juvenile is suffering severe pain or is in danger of loss of life or permanent injury, medical treatment may be administered without parental consent. When none of the above situations exist, parental consent or judicial concurrence must be made before providing medical treatment.

(3) Juveniles suspected of having a contagious or communicable disease shall be isolated from other juveniles.

(4) There shall be at least one person on duty in the jail supervising the nonsecure hold area who is trained in multimedia first aid and CPR.

(5) First-aid kits shall be immediately available.

(6) Any person providing medication shall be trained in the procedure of providing medication.

(7) As part of the admission procedure, a medical history intake form shall be completed. As part of this procedure, an attempt will be made to determine if the juvenile is suicidal by observing behavior and looking for marks or scars which would indicate previous suicide attempts.

(8) There shall be written policies or procedures pertaining to providing medication.

(9) All medication shall be stored according to state pharmaceutical standards and written inventory control maintained. The inventory shall include the starting number of pills, when pills were provided and by whom, the remaining number of pills at the time the juvenile left the jail, the disposition of the remaining pills, and a staff witness to the disposition of the pills.

(10) Special diets as prescribed by a physician or physician assistant shall be followed and documented.

(11) When a special diet is required for an individual due to a bona fide religious belief, the jail shall meet that need.

*b. Communications.*

(1) Juveniles shall be permitted, at no charge, telephone access to their family or an attorney, or both, without unnecessary delay after being taken into custody. Once family or attorney has been contacted, the number of additional calls, if any, will be determined by attendant.

(2) Attorneys and ministers shall be permitted to visit upon request when such visiting will not disrupt security or daily routines of the jail. Determination of additional visits shall be made by attendant.

*c. Safety and sanitation.*

(1) Walls, floors, and ceiling shall be well maintained.

(2) Facility shall be maintained in a pest-free condition.

(3) Clean bedding, including sheets, blankets, and pillowcases, shall be issued to each juvenile who wishes to sleep between the hours of 9 p.m. and 7 a.m.

(4) Soiled clothing which may affect the health of the juvenile shall be exchanged for clean, jail-provided clothing.

(5) An emergency evacuation plan must be conspicuously posted.

(6) There shall not be less than one AA-ABC fire extinguisher in operable condition for each 3,000 square feet of facility on any given floor of the building.

(7) All exits shall be equipped with independent emergency lighting.

(8) Where exits are not immediately accessible from an open floor area, safe and continuous passage aisles or corridors leading directly to every exit shall be maintained and shall be so arranged as to provide access for each juvenile to at least two separate and distinct exits from each floor. A locked exit may be classified as an emergency exit only if necessary keys to locked doors are on the person of the attendant. Elevators shall not be counted as required exits.

(9) A means of fire detection utilizing equipment of a type tested and approved by Underwriters Laboratories shall be installed and maintained in operational condition according to the factory manual. These alarms shall be ceiling-mounted and of such construction to continue in operation during power failure. Alarms shall be tested on at least a monthly basis. Such test shall be documented.

(10) Only fire-resistant mattresses and pillows approved by the state fire marshal's office shall be used.

*d. Staff training requirements.*

(1) Attendants shall be knowledgeable of jail policies and procedures pertaining to juvenile nonsecure holds, and acknowledgment of this shall be made by attendant's dated signature.

(2) Nonsecure hold attendants shall have received instruction in the following areas prior to supervising juveniles in a nonsecure holding area:

1. Role of nonsecure hold attendant.
2. Confidentiality issues.
3. Intake procedures—medical and suicide screening.
4. Communication and listening skills.
5. Dealing with a depressed or suicidal juvenile.
6. Overview of state and federal law.
7. Provision of medication.
8. Gentle self-defense.
9. Child abuse identification.

*e. Juvenile supervision.*

(1) An attendant shall be in the presence of all juveniles held at all times. Same-sex attendant or staff shall be present when juveniles perform bodily functions/shower.

(2) A log shall be maintained at half-hour intervals reflecting the juvenile's activities and behavior.

*f. Records.* The following records shall be maintained by the jail for a period of at least two years:

(1) Medical history intake form.

(2) Records of medical care.

(3) Injury reports.

(4) Food served.

(5) Records of staff training.

(6) Disposition of medication.

(7) Individual log.

(8) Any use of force reports.

(9) Any suicide or suicide attempts reports.

*g. Incident reports.* Reports of the following incidents shall be sent to the state jail inspection unit, department of corrections, within 24 hours of incident:

(1) Any injury to juvenile or staff that requires medical attention.

(2) Any use of force by staff.

(3) Any attempted suicide.

The state jail inspection unit, department of corrections, shall be notified within five hours of any successful juvenile suicide that occurred in a nonsecure hold area.

**50.24(6) Exemption from nonsecure hold standards.** Any requests for exemption from nonsecure hold standards shall be submitted according to the waiver provisions under 201—Chapter 7, Iowa Administrative Code.

[ARC 5538C, IAB 3/24/21, effective 4/28/21; ARC 6905C, IAB 2/22/23, effective 3/29/23]

**201—50.25(356,356A) Direct supervision jails.** Direct supervision jails, in addition to the preceding rules, are subject to the following rules:

**50.25(1)** There may be contact of different classifications of prisoners in a common activity area only while the prisoners are under continuous direct supervision with the exception of:

*a.* Persons of whom violence is reasonably anticipated. (50.13(1)“d”(1))

*b.* Persons who are a health risk. (50.13(1)“d”(2))

*c.* Persons of whom sexually deviant behavior is reasonably anticipated. (50.13(1)“d”(3))

*d.* Persons under the age of 18 (Iowa Code section 356.3). Persons charged in adult court with a forcible felony are to be separated whenever possible.

**50.25(2)** There shall be separate and distinct staff persons in the jail at all times to perform the following duties:

*a.* Provide central control or lock doors into or out of the housing unit.

*b.* Provide direct supervision of prisoners in the housing unit. During hours of lockdown, prisoner checks may be done hourly and documented. Prisoners must be physically observed during these checks.

*c.* Provide emergency backup to the supervision officer as a priority of assigned duties.

**50.25(3)** Prisoners classified as maximum security may not be allowed into areas occupied by other prisoners at any time. Maximum security prisoners may be required to exercise or perform other activities in a group with other maximum security prisoners only. Facility staff must weigh the potential for violence prior to admitting any maximum security prisoner into a group.

**50.25(4)** The housing unit shall not exceed its rated capacity.

**50.25(5)** Whenever prisoners are not locked down, there shall be sufficient lighting in all areas of living units and activity areas to allow full observation by staff.

**50.25(6)** Prisoners assigned to one living unit shall not be allowed to enter a different living unit except when permitted to share activities.

**50.25(7)** Any agency utilizing a direct supervision mode of prisoner management shall ensure that, before accepting prisoners, jail staff shall receive appropriate training in the following areas:

*a.* Philosophy of direct supervision.

- b. Techniques of effective supervision and leadership.
- c. Decision-making techniques.
- d. Crisis intervention techniques.
- e. Effective communication techniques.
- f. Classification and evaluation techniques for direct supervision jails.

The training mandated by this chapter is required in addition to the above-listed training requisites.

**50.25(8)** There shall be a classification system developed which shall include an initial classification determination and an ongoing evaluation of the classification status. This system shall include, but not be limited to, the following considerations:

- a. Individual's criminal history.
- b. Individual's present behavior.
- c. Individual's present charge.
- d. Health.
- e. Potential for violence.
- f. Sexual deviation.
- g. Self-harm or suicide potential.
- h. Mental and physical maturity relative to personnel safety.
- i. Previous behavior in other institutional settings.
- j. Noticeable changes in attitude.

**50.25(9)** Programming (books, television, work, treatment) shall be available to reduce prisoner idleness. Subjects referred to within the parentheses are illustrative and not inclusive.

**50.25(10)** Each officer assigned to a housing unit shall have a mechanical or electronic means on the officer's person to summon assistance in times of emergency.

**50.25(11)** Supervision checks as required by paragraph 50.13(2) "a" will continue to be required and documented. CCTV shall not be used for supervision checks. During those periods when prisoners are out of their cells and in full view of staff, supervisory checks need not be conducted. Supervisory checks will be made when prisoners are allowed in their individual cells.

**50.25(12)** All incoming prisoners must be thoroughly oriented to expectations, rules, and routines of the jail. All such orientation must be documented.

**50.25(13)** Policies and procedures shall be developed by the sheriff or designee for the operation of the jail. These policies and procedures shall reflect the rules for direct supervision jails as delineated in this chapter. All staff shall be knowledgeable of and have access to the policy manual and shall receive training in the implementation of said policies and procedures prior to being assigned as a housing unit officer. The sole remedy for breach of these rules is by a proceeding for compliance initiated by request from the department of corrections. The violation of any rule shall not be construed to permit any civil action to recover damages against the state of Iowa, its departments, agents or employees or any county, its agencies or employees.

These rules are intended to implement Iowa Code sections 80B.11A, 356.36, and 356.43 and chapter 356A.

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<sup>1</sup> September 5, 2018, effective date of ARC 3929C [amendments to chs 1, 5, 10, 11, 20, 38, 40, 41, 42, 43, 44, 45, 47, 50, 51] delayed 70 days by the Administrative Rules Review Committee at its meeting held August 14, 2018.



CHAPTER 51  
TEMPORARY HOLDING FACILITIES  
[Prior to 3/20/91, Corrections Department[291]]

**201—51.1(356,356A) Definitions.**

*“Capacity”* means the number of prisoner or detainee occupants which any cell, room, unit, building, facility or combination thereof may accommodate according to the square footage requirements of the standards.

*“Cell”* means single occupancy bedroom space with toilet and lavatory facilities.

*“Classification”* means a system of obtaining pertinent information concerning detainees with which to make a decision on assignment of appropriate housing, security level, and activities.

*“Detainee”* means any individual confined in a temporary holding facility.

*“Detention area”* means that portion of the facility used to confine detainees.

*“DOC”* means the Iowa department of corrections.

*“Dormitory”* means an open area for two or more detainees with all fixtures self-contained. There is no barrier between the sleeping area and other fixtures such as shower, table, recreation equipment, or similar items.

*“Emergency situation”* means any significant disruption of normal operations caused by riot, strike, escape, fire, natural disaster or other serious incident.

*“Existing facility”* means any place in use as a jail or temporary holding facility or for which bids have been let for construction prior to September 12, 2001.

*“Facility”* means a temporary holding facility as defined by these rules.

*“Holding cell”* means a secure room or cell where detainees may be held up to 24 hours while awaiting the procedure of commitment or release or court appearances.

*“Holdover”* means a nonsecure area within a law enforcement facility, hospital, mental health facility or other existing public building that is intended to serve as a short-term holding facility for juveniles. A nonsecure area may be a multipurpose area which is unable to be locked.

*“Housing unit”* means an individual detention area. This area may be a single occupancy cell, multiple occupancy cell, cellblock, or dormitory.

*“Inspection unit”* means the state jail inspection unit.

*“Jail inspector”* means the department of corrections employee responsible for inspections of temporary holding facilities and enforcement of these rules by the authority of Iowa Code section 356.43.

*“Juvenile”* means any person under the age of 18 years.

*“Mail”* means anything that is sent to or by a detainee through the United States Postal Service.

*“Major remodeling”* means construction that changes the architectural design of an existing facility and that increases or decreases capacity.

*“Medical practitioner”* means licensed physician, licensed osteopathic physician or physician assistant or medical resources such as a hospital or clinic.

*“Mental illness”* means a psychiatric illness or disease expressed primarily through abnormalities of thought, feeling, and behavior producing either distress or impaired function.

*“Minister”* means a trained person ordained or licensed by a bona fide religion to conduct the services of that faith.

*“Monitoring”* means having a reasonable degree of knowledge or awareness of what activities a detainee is engaged in during incarceration.

*“Multiple occupancy cell”* means a cell designed for no more than six detainees.

*“Nonsecure hold”* means a nonsecure area within a law enforcement facility and which is intended to serve as a short-term holding facility for juveniles. A nonsecure area may be a multipurpose area which is unable to be locked.

*“Person performing temporary holding facilities duties”* means all persons directly involved in the provision of services to detainees or the operation of a facility except:

1. Outside contractors performing specific housekeeping functions under the direct supervision of a facility supervisor.

2. Individuals such as maintenance personnel, cooks, and janitors, if they do not have direct contact with detainees or routine access to areas occupied by detainees.

“*Physical jeopardy*” means, due to the detainee’s physical or mental condition, the detainee is in peril of serious physical harm.

“*Residential facilities*” means the facilities governed by 201—Chapter 43.

“*Temporary holding facility*” means secure holding rooms or cells administered by a law enforcement agency where detainees may be held for a limited period of time, not to exceed 24 hours, and a reasonable time thereafter to arrange for transportation to an appropriate facility. A law enforcement agency is not required to meet the standards for temporary holding facilities provided a detainee is held for less than two hours prior to transportation to an appropriate facility and a trained staff person of the agency is available to respond to, render aid to, or release the detainee in the event of a life-endangering emergency.

“*Temporary holding facility administrator*” means the executive head of any law enforcement agency, or the executive’s designee, operating a temporary holding facility. The temporary holding facility administrator shall be responsible for the operation of the facility according to these rules.

“*Temporary holding facility inspector*” means the department of corrections employee responsible for inspection of temporary holding facilities and enforcement of these rules by the authority of Iowa Code section 356.43.

“*Temporary holding facility supervisor*” means any person who is responsible for the routine operation of the facility during the person’s assigned duty hours. This person need not be on the premises at all times, but must be readily available for consultation.

“*Unencumbered space*” means floor space that is not encumbered by furnishings or fixtures. “Unencumbered space” is determined by subtracting the floor area encumbered by furnishings and fixtures from the total floor area. (All fixtures must be in operational position for these calculations.)

“*Waiver*” means waiver of a specific standard granted by the jail inspection unit in accordance with these rules.

“*Weapons*” means any instrument, excluding restraining devices, chemical control agents and electronic control devices, with an intended use of self-defense, protection of another, or to gain or maintain compliance from an individual.

[ARC 9578B, IAB 6/29/11, effective 8/3/11; ARC 5538C, IAB 3/24/21, effective 4/28/21]

**201—51.2(356,356A) General provisions.** These rules apply to all temporary holding facilities regulated by Iowa Code chapter 356 or 356A.

**51.2(1) Capacity.** Established capacities as determined by these rules shall not be exceeded except in the event of an emergency, and then only for such a period of time as is necessary to arrange for alternate housing or release of sufficient detainees to bring the number of persons confined into compliance with the rated capacity.

**51.2(2) Right to inspect and visit.** The chief jail inspector or authorized representatives shall visit and inspect temporary holding facilities and may do so on an unannounced basis. Facility personnel and supervisors shall cooperate in inspections and shall exhibit to the inspectors, upon request, all books, records, medical records, data, documents and accounts pertaining to a temporary holding facility or to the detainees confined and shall assist inspectors to perform the functions, powers and duties of their office. Provisions of the first paragraph of Iowa Code section 356.43 shall control to the extent of any inconsistency of the provisions of this subrule.

**51.2(3) Other standards.** Nothing contained in these standards shall be construed to prohibit local officials from adopting standards and requirements governing their employees and facilities, provided these standards and requirements exceed and do not conflict with standards mandated in this chapter. These standards shall not be construed as authority to violate any state fire safety standard, building standard, health and safety code, or any constitutional requirement. No facility shall be operated without

substantially meeting these rules unless operating under a waiver granted according to the provisions of 201—Chapter 7, Iowa Administrative Code.

**51.2(4) *Equal opportunity.*** Facilities, programs, and services shall be available on an equitable basis to both males and females even though each standard does not specify that it applies to both males and females.

**51.2(5) *Nondiscriminatory treatment.*** Each facility administrator shall ensure that staff and detainees are not subject to discriminatory treatment based upon race, religion, nationality, disability, sex or age, absent compelling reason for said discriminatory treatment. Discrimination on the basis of a disability is prohibited in the provision of services, programs and activities.

**201—51.3(356,356A) Inspection and compliance.** The chief inspector or authorized representatives shall visit and inspect each facility within this state at least annually to determine the degree of compliance with these standards and within 45 days of each inspection shall report the results to the temporary holding facility administrator and the governing body responsible for the facility.

**51.3(1) *Notice of noncompliance with minimum standards.*** Whenever the determination is made that a temporary holding facility is not in compliance with established minimum standards, the chief administrator of the affected governmental facility will be notified by letter posted or personal delivery of the need to bring the facility into compliance. The jail inspection unit shall issue a notice of noncompliance to the responsible facility administrator and the governing body of each instance in which the facility fails to comply with the minimum standards established under these rules. The letter shall contain a listing of the statute(s) and rule(s) with which the facility is not in compliance and a description of the deficiencies and shall specifically identify each minimum standard with which the facility has failed to comply.

**51.3(2) *Enforcement of minimum standards; remedial orders.*** Upon receipt of a notice of noncompliance pursuant to subrule 51.3(1), the responsible authorities shall initiate appropriate corrective measures within the time prescribed by the jail inspection unit in its notice (which shall not exceed 90 days) and shall complete the corrections within a reasonable time as prescribed by the notice of noncompliance. The jail inspector may agree with the responsible authorities to a plan of action detailing corrective steps with corresponding time frames which will bring the facility into compliance within a reasonable time. If the responsible officials receiving notice of noncompliance fail to initiate corrective measures or to complete the corrective measures within the time prescribed, the jail inspection unit may order the facility in question or any portion thereof closed, that further confinement of detainees or classifications of detainees in the noncomplying facility or any portion thereof be prohibited, or that all or any number of detainees then confined be transferred to and maintained in another facility, or any combination of remedies.

An order for closure shall contain the following:

- a. Statute(s) and rule(s) violated.
- b. A brief description of the deficiencies.
- c. The effective date of the order.
- d. An explanation of remedies required before reopening.

This order shall be the notice of noncompliance pursuant to Iowa Code section 356.43 and 201—Chapter 12 concerning contested cases. The matter shall then proceed in accordance with 201—Chapter 12. The jail inspector may agree with the responsible authorities to a plan of action detailing corrective steps with corresponding time frames which would bring the facility into compliance within a reasonable time. The remedial order shall be in writing and shall specifically identify each minimum standard with which the facility has failed to comply. Such remedial order shall become final and effective 30 days after receipt thereof. In the event immediate closure is required, emergency action shall proceed pursuant to 201—12.24(17A).

**51.3(3) *Precedent.*** Because rules cannot adequately anticipate all potential specific factual situations and circumstances presented for action, determination or adjudication by the jail inspection unit, the nature of the action taken with regard to any matter or the disposition of any matter pending before the jail inspection unit is not necessarily of meaningful precedential value, and the department shall

not be bound by the precedent of any previous action, determination, or adjudication in the subsequent disposition of any matter pending before it.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12 and 356.43.  
[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

**201—51.4(356,356A) Physical plant—general.**

**51.4(1) *Building to meet existing codes.*** All facilities are required to be structurally sound and to meet existing building code and health code requirements.

**51.4(2) *Professional inspections.***

*a.* The state jail inspector may require for good reason that an agency operating a facility cause it to be examined by an architect, engineer, licensed electrician, health inspector, plumber, heating and air conditioning specialist, food establishment inspector, state fire marshal or fire inspector or any other person with expertise which may be of assistance to the state jail inspector in making an informed decision relative to the facility operation or structure. Inspection by a municipal inspector qualified in these areas may be permitted.

*b.* Any facility determined to be deficient following inspection may be ordered closed by the jail inspector or specific conditions limiting its operation may be imposed in lieu of closing.

An order of closure shall contain the following:

- (1) Statute(s) and rule(s) violated.
- (2) A brief description of the deficiencies.
- (3) The effective date of the order.
- (4) An explanation of remedies required before reopening.

An order of closure shall adhere to subrules 51.3(1) and 51.3(2).

This order shall be the notice of noncompliance pursuant to Iowa Code section 356.43 and 201—Chapter 12, Contested Cases. The matter shall then proceed in accordance with 201—Chapter 12.

*c.* In the event that any agency fails to cooperate in an inspection, the jail inspector may arrange for an inspection and the agency operating the facility shall be financially responsible for any expense involved.

**51.4(3) *Heating and ventilation.*** All detention and living areas shall be reasonably heated and ventilated, with air flow sufficient to admit fresh air and remove disagreeable odors, to ensure healthful and comfortable living and working conditions for detainees and staff. Fans and an adequate supply of cold liquids will be made available and utilized when indoor temperatures exceed 85° Fahrenheit.

**51.4(4) *Cells.*** Maximum security cells shall be equipped with tamper-resistant bunks, secured table(s) and seat(s), plus a toilet and wash basin recommended for jail or prison use. Cells shall have an adequate supply of both hot and cold water; mixing valves may be used. Housing areas of less secure design need not contain tamper-resistant fixtures. The cell must be constructed to minimize self-injury. Toilet facilities should be controlled from outside the cell and may be in the floor. Water need not be available in the cells but water must be accessible from staff upon request.

**51.4(5) *Lighting.*** Lighting shall be a minimum of 20 candlepower at the table top for the purposes of reading and writing. Living areas shall be devoid of dark areas. Lighting adequate to observe persons within the cell area shall be maintained at all times. All entrances, exits and hallways shall be equipped with independent emergency lighting sources. Hallways, entrances and exits shall be sufficiently lit to observe persons entering or exiting. Light controls shall be out of the control of detainees. Housing areas may be variably illuminated to allow sleep, but continuous observation of detainees must be possible.

**51.4(6) *Screens.*** If windows are opened for ventilation, screens shall be installed and maintained in good repair.

**51.4(7) *Electrical facilities.*** Drop cords shall not be used as permanent wiring. Electrical service shall meet the requirements of the governmental body permitted by statute to adopt standards for electrical service. Appliances shall plug directly into a fixed receptacle. Emergency generator power shall be available. Emergency generator power shall be tested at regular intervals not less than monthly. A record of test dates shall be maintained.

**51.4(8) *Storage.***

a. Storage of any type in primary detention areas is not permitted except for supplies necessary for operation of the facility.

b. Adequate storage space for detainees' personal clothing and property shall be provided. Space provided shall be secure and the detainee's name or identity shall be affixed to the storage space. Property shall be inventoried and accounted for as provided in Iowa Code section 804.19.

c. Janitorial supplies shall be stored in a manner to prevent unauthorized detainee access. Janitorial supplies and equipment shall not be stored in detainee living areas.

d. Areas used for storage of chemicals, paints, and cleaning supplies shall not be accessible to detainees and such products shall be stored away from the primary detention area. Such storage shall not be in boiler or furnace rooms.

**51.4(9) Firearms lockers.** A place inaccessible to detainees shall be provided where officers entering the security area can store firearms.

**51.4(10) Noise level.** Detainee noise inside the facility shall be controlled to ensure an orderly and secure facility operation. The policy and procedures manual shall include a rule pertaining to noise level. Detainees must be advised of the rule.

**51.4(11) Mirrors.** Mirrors within detention areas shall be of tamper-resistant construction and securely fixed in place.

[ARC 9578B, IAB 6/29/11, effective 8/3/11]

**201—51.5(356,356A) Physical requirements for existing facilities.** This rule shall apply to all facilities in existence prior to June 30, 1984. In cases where an existing facility undergoes major remodeling, rule 201—51.7(356,356A) shall apply to the area being upgraded.

**51.5(1)** Each single occupancy cell for detainees in normal status shall have a minimum floor area of 40 square feet.

**51.5(2)** Multiple occupancy cells must have 40 square feet of floor space for the first occupant and an additional 20 square feet for each additional occupant.

**51.5(3)** Except in emergency situations, no multiple occupancy cell shall house more detainees than the designed capacity.

**51.5(4)** Each cell shall provide a minimum of 7 feet from floor to ceiling height.

**51.5(5)** All cells shall be equipped with bunks sufficient to ensure a bunk for each detainee assigned. Every cell will be equipped with a toilet and lavatory that function properly and supply adequate running water. Bunks must be of a size to accommodate a normal-sized male adult. Toilet and lavatory facilities must be accessible to detainees at all times.

**51.5(6)** Reserved.

**51.5(7)** Holding cells are multiple occupancy space where detainees may be confined only while awaiting processing through administrative or legal procedures. These areas must have at least 40 square feet of floor space for the first detainee with 20 square feet for each additional detainee.

**51.5(8)** Dormitory units shall have a minimum of 60 square feet of floor space per detainee.

**201—51.6(356,356A) Physical requirements for new or remodeled facilities—after June 30, 1984.** This rule shall apply to temporary holding facilities which are of new or remodeled construction or let for bid after June 30, 1984. Plans for any remodeling or new construction shall be submitted to the jail inspection unit prior to letting any bids or commencing any construction subject to this rule. The inspection unit shall, within 60 days of receiving plans, review them for compliance with these rules and forward any comments to the submitting authority.

**51.6(1)** New housing units may be dormitory units, single occupancy cells or multiple occupancy cells. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 70 square feet of floor space for the first detainee and an additional 50 square feet of floor space for each additional detainee. Dormitory units shall have a minimum of 35 square feet of unencumbered floor space per detainee.

**51.6(2)** All new housing units shall provide:

a. No less than 7 feet of space between the floor and ceiling.

*b.* A bunk of adequate size for normal-sized adults for each detainee.

**51.6(3)** Each new dormitory unit or single and multiple occupancy cell shall have a security-type toilet/lavatory combination fixture which provides adequate running water. These cells may rely on common toilet facilities located outside the detention room provided that the detainee is never involuntarily locked in the room and denied access to the toilet facilities.

**51.6(4)** The new facility shall be designed to admit natural lighting and to give access to outside viewing by detainees where practical.

**51.6(5)** The new facility shall be designed and constructed so that detainees may be segregated according to existing laws and regulations.

**51.6(6)** Except in emergency situations, no housing unit shall house more detainees than its rated capacity.

**51.6(7)** Holding cells shall provide a minimum of 20 square feet per detainee with a total capacity of eight detainees per cell. Holding cells need not contain any fixture other than a means whereby detainees may sit. Drinking water and toilet facilities shall be made available under staff supervision. Detainees will be supplied blankets if the detainees are detained overnight in the holding cell.

**201—51.7(356,356A) Physical requirements for new or remodeled facilities—after September 12, 2001.** This rule shall apply to temporary holding facilities which are of new or remodeled construction after September 12, 2001, the effective date of these rules. Plans for any remodeling or new construction shall be submitted to the jail inspection unit prior to letting any bids or commencing any construction subject to this rule. The jail inspection unit shall, within 60 days of receiving plans, review them for compliance with this rule and forward any comments to the submitting authority.

**51.7(1)** New housing units may be dormitory units, single occupancy cells or multiple occupancy cells. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 35 square feet of unencumbered floor space for each detainee. Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space per detainee.

*a.* This paragraph shall apply to all temporary holding facilities that are of new or remodeled construction after December 28, 2005, and may apply to temporary holding facilities that were constructed prior to December 28, 2005.

(1) Single occupancy cells shall provide a minimum of 35 square feet of unencumbered floor space. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 70 square feet of total floor space.

(2) Multiple occupancy cells shall provide a minimum of 25 square feet of unencumbered floor space for each detainee. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 35 square feet of unencumbered floor space for each detainee.

(3) Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space for each detainee.

(4) A facility may contain one or more single occupancy cells, designated as special-needs cells, in which violent persons may be temporarily contained. The cell shall have not less than 40 square feet of floor space and a ceiling height of not less than 7 feet. The cell shall be constructed to minimize self-injury. Toilet facilities may be controlled from outside the cell and may be in the floor. Water need not be available in the cells, but water shall be accessible from staff upon request.

*b.* Reserved.

**51.7(2)** All new housing units shall provide:

*a.* No less than 7 feet of space between the floor and ceiling.

*b.* A bunk of adequate size for normal-sized adults for each detainee.

**51.7(3)** Each new dormitory unit or single or multiple occupancy cell shall have a security-type toilet/lavatory combination fixture which provides adequate running water for each group of nine detainees or portion thereof. These cells may rely on common toilet facilities located outside the detention room provided that the detainee is never involuntarily locked in the room and denied access to the toilet facilities.

**51.7(4)** The new facility shall be designed and constructed so that detainees may be segregated according to existing laws and regulations.

**51.7(5)** Except in emergency situations, no housing unit shall house more detainees than its rated capacity.

**51.7(6)** Holding cells shall provide a minimum of 20 square feet per detainee with a total capacity of eight detainees per cell. Holding cells need not contain any fixture other than a means whereby detainees may sit. Drinking water and toilet facilities shall be made available under staff supervision. Detainees will be supplied blankets if detained overnight in the holding cell.

**201—51.8(356,356A) Fire safety and emergency evacuation.**

**51.8(1) *Approval of building plans.*** All new construction or major remodeling plans shall be approved prior to commencement of construction by the state fire marshal.

**51.8(2) *Compliance with fire marshal rules.*** No facility shall be occupied by a detainee unless the state fire marshal or qualified local fire prevention authority has issued a certificate of inspection within the last 18 calendar months documenting that the facility complies with the fire safety standards for temporary holding facilities included in administrative rules promulgated by the state fire marshal.

Temporary holding facilities may be inspected by the fire marshal, or by personnel of local fire departments deemed by the fire marshal qualified to conduct inspections, on a schedule determined by the fire marshal. The state jail inspection unit of the Iowa department of corrections, a temporary holding facility administrator, or the chief executive of an agency which administers a temporary holding facility may request the state fire marshal to inspect a temporary holding facility for compliance with fire safety standards. If the state fire marshal finds, based on such an inspection, that a temporary holding facility is not in substantial compliance with fire safety standards, the state fire marshal may require the facility administrator to submit a plan of correction of violations of these standards to the fire marshal. The director of the Iowa department of corrections may initiate proceedings to close the temporary holding facility if the facility does not comply with the plan of correction.

**51.8(3) *Evacuation plan.*** The administrator of each facility shall prepare a written plan for emergency evacuation of the facility in the event of fire or other disaster. This plan shall include security arrangements and one or more alternate housing arrangements for displaced detainees. All personnel employed in the facility shall be thoroughly familiar with this plan, and relevant portions thereof shall be conspicuously posted. Evacuation drills shall be practiced or simulated by all facility staff on at least an annual basis, and a record thereof shall be maintained according to subrule 51.19(9), Iowa Administrative Code.

**51.8(4) *Release of detainees.***

*a.* There shall be a reasonable expectation of the prompt removal of detainees in the event of a life-threatening situation. Keys for all locks necessary for emergency exit shall be readily accessible and clearly identifiable with cell and door locks.

*b.* There shall be at least one full set of facility keys, other than those regularly used, stored in a safe place accessible only to appropriate persons, for use in the event of an emergency.

**51.8(5) *Fire extinguishers.*** All temporary holding facilities shall be equipped with fire extinguishing equipment approved and located in accordance with standards established by the state fire marshal by administrative rule. Fire extinguishers shall be tested at least annually to ensure they remain in operative condition. A record of such checks shall be maintained.

**51.8(6) *Emergency lighting.*** All exits shall be equipped with independent emergency lighting sources. All corridors and passage aisles shall be illuminated by independent emergency lighting sources. Lighting shall be arranged to ensure that no area will be left in darkness.

**51.8(7) *Required exits.*** Where exits are not immediately accessible from an open floor area, safe and continuous passage aisles or corridors leading directly to every exit shall be maintained and shall be so arranged as to provide access for each detainee to at least two separate and distinct exits from each floor. Passage aisles or corridors shall be kept clear. A locked exit may be classified as an emergency exit only if necessary keys to locked doors are readily available. Elevators shall not be counted as required exits.

**51.8(8) Fire alarms.** A means of fire detection utilizing equipment of a type meeting requirements established by the state fire marshal shall be installed and maintained in operational condition. These alarms shall be ceiling-mounted if possible and shall be located and protected from detainee access. The detection equipment shall be battery-operated or constructed as to continue operating during a power failure. Battery-operated systems shall be tested monthly. Electronic systems shall be tested at least annually. A record of test dates and results shall be maintained according to subrule 51.19(9), Iowa Administrative Code.

**51.8(9) Heating appliances.** Heating appliances and water heaters shall not be located along the path of required exits.

**51.8(10) Hinged doors.** All hinged doors serving as required exits from an area designed for an occupancy in excess of 50 persons, or as part of a major remodeling project or as part of new construction, shall swing with exit traffic.

**51.8(11) Mattresses.** Only fire-resistant mattresses of a type that will not sustain a flame and are certified by an independent testing laboratory and that meet the standards established by the state fire marshal shall be used in temporary holding facilities. Mattresses that are ripped, are excessively cracked or contain large holes shall be replaced. Pillows shall be replaced when torn or excessively cracked.

**51.8(12) Sprinkler.** If installed, sprinkler heads accessible to detainees not under direct supervision must be of the weight-sensitive type, be protected with a sleeve that would hamper the tying of material on the sprinkler head, or be recessed into the wall or ceiling.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

#### **201—51.9(356,356A) Minimum standards for facility personnel.**

**51.9(1) Requirements for employment.** No person shall be recruited, selected or appointed to serve as a holding facility administrator unless the person:

- a. Is 18 years of age or older.
- b. Is able to read and write in English.
- c. Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted of local, state and national fingerprint files.
- d. Is not by reason of conscience or belief opposed to the use of force, when appropriate or necessary to fulfill the person's duties.
- e. Has the ability to perform the essential elements of the position as defined in the department job specification.
- f. Is an appropriate candidate for employment as demonstrated by qualified psychological screening.

**51.9(2) Minimum standard for retention.** No employee who has demonstrated inappropriate action beyond a reasonable degree, who is not psychologically fit for facility employment, or who has repeatedly failed to observe these rules shall be retained.

**51.9(3) Conflict of interest.** No person working in a facility shall transact any business with any detainee, nor shall any person working in a facility arrange through another party any business transaction with a detainee. The facility shall have a written code of ethics that shall be provided to all employees. At a minimum, the code shall:

- a. Prohibit staff from using their official positions to secure privileges for themselves or others.
- b. Prohibit staff from engaging in activities that constitute a conflict of interest.

#### **201—51.10(356,356A) Training for facility personnel.**

**51.10(1) Initial orientation.** Except in an emergency situation, all persons performing temporary detention duties shall meet the following requirements, and the provision of this information and training shall be documented.

- a. The individual shall be fully knowledgeable of the administrative rules referring to facility standards.
- b. The individual shall be fully knowledgeable of facility rules, written policies and procedures as adopted by the administrator.

c. The individual shall have been given specific orientation with respect to a detainee's rights during confinement and procedures adopted to ensure those rights.

d. If the individual is to have access to a firearm at any time, the person shall hold a valid permit to carry weapons issued under the authority of Iowa Code chapter 724.

e. The individual shall be professionally trained and qualified in the use of any firearm, electric restraint control device and chemical control agents prior to their use in connection with the individual's duties at the facility.

f. The individual shall have been instructed in the use of required firefighting equipment and the fire and emergency evacuation plan.

g. All staff providing medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.

h. The holding facility administrator shall record by log sheet the signature(s) of all staff performing temporary holding facility duties, attesting that they have full knowledge of the administrative rules referring to facility standards and the written policies and procedures governing the facility's operation.

**51.10(2) *Training documented.*** All temporary holding facility workers and administrators shall meet and document training requirements as specified by Iowa law enforcement academy training standards as found in 501—9.3(80B) and 501—9.4(80B), Iowa Administrative Code. The facility administrator shall record by log sheet the signature(s) of all persons attending the training.

a. The training shall include a minimum of ten hours of training within the first year of employment. Training shall include the following or comparable course content:

(1) Introduction to Iowa criminal procedure and criminal law as applicable to the temporary holding facility setting, including laws relating to the use of force.

(2) Security procedures, including procedures regarding the proper methods of transporting detainees.

(3) Supervision of detainees, including instruction on the basic civil rights of a detainee, which would be applicable to a temporary holding facility.

(4) Recognition of symptoms of mental illness, retardation or substance abuse.

(5) Specific instruction in the prevention of suicides.

b. During each fiscal year of employment, following completion of the required ten hours of training, temporary holding facility workers and administrators shall complete, at a minimum, five hours of in-service training, not to include hours spent in maintaining required certification or proficiency in first aid, life support, and handling of firearms.

**51.10(3) *First aid.*** At least one staff member on duty at the facility shall be trained in first aid (or the equivalent) and CPR.

a. The individual shall hold an American Red Cross standard first-aid certificate or the equivalent or one of the following:

(1) Certification as an Iowa law enforcement emergency care provider from the Iowa department of public health;

(2) Certification of completion of an emergency medical technician program; or

(3) Licensure to practice as a licensed practical nurse, registered nurse or medical practitioner in the state of Iowa.

b. The individual shall be certified as having successfully completed the basic life support training conducted under the program of the American Heart Association or the American Red Cross.

c. All certification or licensure required by this subrule must be maintained current according to the standards of the certifying or licensing agency.

**201—51.11(356,356A) Standard operating procedures manual.** Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each municipality shall establish and the facility administrator shall ensure compliance with a standard operating procedures manual to include the following administrative rules: subrules 51.2(4), 51.2(5), 51.4(3), 51.4(7), 51.4(10), 51.8(3), 51.8(4), 51.8(5), 51.8(7), 51.8(8),

51.8(11), 51.9(1), 51.9(2), 51.9(3), 51.10(1), 51.10(2), 51.10(3) and rules 201—51.11(356,356A) to 201—51.19(356,356A) as noted. The following does not require written policy: 51.13(4).

**51.11(1) Admission/classification and security.**

a. No person shall be confined or released from confinement without appropriate process or order of court.

b. With the exception of incidental contact under staff supervision, the following classes of detainees shall be kept separate by architectural design barring conversational and visual contact from each other:

(1) Juveniles and adults (pursuant to Iowa Code section 356.3).

(2) Females from males (pursuant to Iowa Code section 356.4).

c. The following shall be kept separate whenever possible:

(1) Felons from misdemeanants.

(2) Pretrial detainees from sentenced persons.

(3) Witnesses from detainees charged with crimes.

d. The following shall be kept physically separated:

(1) Detainees of whom violence is reasonably anticipated.

(2) Detainees who are a health risk to others.

(3) Detainees of whom sexually deviant behavior is reasonably anticipated.

(4) Prisoners likely to be exploited or victimized by others.

e. Detention of juveniles shall be pursuant to Iowa Code section 232.22.

f. All staff involved in the booking process or the supervision of detainees shall be trained in suicide prevention. At the time of booking, an attempt shall be made (either by observation for marks or scars or direct questioning of the detainee) to determine if the detainee is suicidal. The following questions, or others of equal meaning, shall be incorporated into the booking process with appropriate documentation to aid in suicide prevention:

(1) Does the detainee show signs of depression?

(2) Does the detainee appear overly anxious, afraid, or angry?

(3) Does the detainee appear unusually embarrassed or ashamed?

(4) Is the detainee acting or talking in a strange manner?

(5) Does the detainee appear to be under the influence of alcohol or drugs?

(6) Does the detainee have any scars or marks which indicate a previous suicide attempt?

In all cases, the following questions will be asked of the detainee:

Have you ever tried to hurt yourself?

Have you ever attempted to kill yourself?

Are you thinking about hurting yourself?

g. Housing for detainees with disabilities shall be designed for the detainees' use, or reasonable accommodations shall be provided for the detainees' safety and security.

h. Temporary holding facility personnel shall ask each detainee within 24 hours of the detainee's incarceration if the detainee is a military veteran. If so, facility personnel shall advise the detainee that the detainee may be entitled to a visit from a veteran service officer to determine if veteran services are required or available and, within 72 hours, shall provide the detainee with contact information for the county commission of veteran affairs and provide the detainee the opportunity to contact the county commission of veteran affairs to schedule a visit from a veteran service officer.

**51.11(2) Security and control.**

a. *Supervision of detainees.* The facility administrator shall develop and implement written policies and procedures for the facility which provide for the control of detainees and for the safety of the public and the facility staff. The policy and procedures shall include:

(1) Twenty-four-hour supervision of all detainees shall be provided pursuant to Iowa Code section 356.5(6).

(2) When staff is not within the confinement area of the facility, a staff person shall be in a position to hear detainees in a life-threatening or emergency situation; or a calling device to summon help will be provided. By policy and practice there shall be a means of ensuring that appropriate personnel will

be available on a 24-hour basis to respond to an emergency, including, but not limited to, fire, assaults, suicide attempts, serious illness, and to preserve order, within a reasonable time period.

(3) At least hourly, personal observations of individual detainees shall be made and documented. Detainees considered to be in physical jeopardy because of physical or mental condition, including apparently intoxicated persons, as indicated by the medical history intake process and by personal observations, shall be checked personally at least every 30 minutes until the condition is alleviated. Closed circuit television (CCTV)-audio monitoring system may supplement, but shall not replace, personal observations. In order to use a CCTV-audio monitoring system, the following requirements must be met: CCTV and audio must be operational at all times. Visual and audio must be clear and distinct. Observation of shower and restroom activities shall be at the discretion of the facility administrator.

(4) No employee or visitor of one sex shall enter a housing unit occupied by the other sex unless advance notice has been provided except in case of an emergency. Advance notice may be provided at the time of orientation.

(5) When females are housed in the facility, at least one female staff member shall be on duty in the facility at all times, in accordance with Iowa Code section 356.5(6).

(6) All juveniles arrested for intoxication due to substance abuse shall be personally observed on a continuous basis throughout the period of detention. The activities of juveniles arrested for crimes other than the above shall be monitored at all times, and the juveniles shall be observed by means of personal supervisory checks at no more than 30-minute intervals.

*b. Weapons.* Except in an emergency situation, no weapons shall be allowed in an area occupied by detainees.

*c. Searches.*

(1) All detainees and detainees' property entering the facility shall be thoroughly searched; searches of persons charged with simple misdemeanors shall follow provisions of Iowa Code section 804.30.

(2) All persons entering a facility may be searched for contraband. Persons may be denied admission if they refuse to consent to a required search.

(3) A search notice shall be posted in a conspicuous place (no policy required).

(4) Detainee rules shall contain a clear definition of each item permitted in the facility. All other items shall be considered contraband.

(5) Random, unannounced, irregularly scheduled searches of areas accessible to detainees shall be conducted for contraband and weapons.

*d. Key control.* Facility keys must be stored in a secure area when not in use. There must be at least one full set of facility keys, separate from those in use, stored in a safe place and accessible only to designated facility personnel for use in the event of an emergency. The facility administrator will identify those persons who may have access to keys.

*e. Detainees' property.* All personal property of detainees shall be inventoried and accounted for according to the provisions of Iowa Code section 804.19.

*f. Restraint devices.* The facility administrator shall have a written policy on the restraint devices. Restraint devices shall not be applied as punishment. Restraint devices shall be used only when a prisoner is a threat to self or others or jeopardizes facility security. There shall be defined circumstances under which supervisory approval is needed prior to application. Restraint devices shall not be applied for more time than is necessary to alleviate the condition requiring the use of the restraint device. While restrained, detainees shall be either clothed or covered in a manner that maximizes detainee privacy. Four/five-point restraints may be used only when other types of restraints have proven ineffective. If detainees are restrained in a four/five-point position, the following minimum procedures shall be followed:

(1) Observation by staff shall be continuous;

(2) Personal visual observation of the detainee and the restraint device application shall be made at least every 15 minutes;

(3) Restraint guidelines shall include consideration of an individual's physical and health condition, such as body weight; and

(4) All decisions and actions shall be documented.

*g. Facility security.*

(1) All areas of the facility shall be inspected regularly and frequently and kept clear of large posters, pictures and articles of clothing that obstruct the view of detainees by facility staff.

(2) All facility locks, doors, bars, windows, screens, grilles and fencing shall be inspected on at least a monthly basis. Any damaged or nonfunctioning equipment or fixtures must be reported to the facility administrator in writing. The facility administrator shall ensure prompt repair of any damaged or nonfunctioning equipment or fixture.

(3) The facility administrator shall develop written policy and procedures for the movement or transportation of detainees outside the secure area of the facility. The policy shall require procedures that will ensure the safety of the facility staff and the public and prevent detainee escape. The policy shall provide procedures for movement of detainees for medical treatment and to and from the courts and other facilities. The classification and security risk of the detainee to be moved will determine the number of staff required and the type of restraints to be used, if any.

(4) The facility administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: bomb threats, riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plan shall be made available to all applicable personnel and shall be reviewed by facility staff at least annually and updated as needed.

[ARC 9578B, IAB 6/29/11, effective 8/3/11]

**201—51.12(356,356A) Cleanliness and hygiene.**

**51.12(1) Housekeeping.**

*a.* The temporary holding facility shall be kept clean and sanitary. Toilets, wash basins, showers and other equipment throughout the facility shall be maintained in good working order. Walls, floors and ceilings shall be well maintained.

*b.* Unless cleaning is done by staff, necessary cleaning equipment shall be provided to detainees. Cleaning equipment shall be removed from the cell when cleaning is complete.

*c.* The facility shall be maintained in pest-free condition. Persons spraying chemicals shall be certified by the Iowa department of agriculture and land stewardship. Detainees and staff shall not be directly exposed to the chemicals being used.

*d.* All clothing and linen, if provided, shall be clean and sanitary.

*e.* The facility shall have a sharps disposal container for razors and needles. The facility shall be equipped to handle disposal of contaminated or hazardous waste according to universal health precautions.

**51.12(2) Reserved.**

**201—51.13(356,356A) Medical services.** The facility administrator shall establish a written policy and procedure to ensure that detainees have the opportunity to receive necessary medical attention for the detainee's objectively serious medical and dental needs which are known to the facility staff. A serious medical need is one that has been diagnosed by a physician or physician assistant as requiring treatment, or one that is so obvious that even a lay person would easily recognize the necessity for a physician's or physician assistant's attention. The plan shall include a procedure for emergency services day or night and a procedure for regular medical attention. Responsibility for the costs of medical services remains that of the detainee. However, no detainee will be denied necessary medical services, dental service, or medicine because of a lack of ability to pay. Medical and dental prostheses shall be provided only for the serious medical needs of the detainee, as determined by a licensed health care professional. Cosmetic or elective procedures need not be provided.

**51.13(1) Medical resources.** Each facility shall have a designated licensed physician, licensed osteopathic physician, physician assistant or medical resource, such as a hospital or clinic staffed by licensed physicians, physician assistants or licensed osteopathic physicians, designated for the medical supervision, care and treatment of detainees as deemed necessary and appropriate. Medical resources shall be available on a 24-hour basis.

**51.13(2) Trained staff.**

a. All staff providing medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.

b. At least one staff member on duty at the facility shall be currently trained in first aid (or the equivalent) and CPR.

**51.13(3) Detainee involvement.** No detainee shall be involved in any phase of delivery of medical services.

**51.13(4) First-aid kits.** A first-aid kit approved by qualified medical personnel shall be available to staff.

**51.13(5) Chemical control agents.** Detainees affected by a chemical control agent shall be offered a medical examination and appropriate treatment as soon as reasonable.

**51.13(6) Screening upon admission.**

a. Any person who is obviously injured, ill or unconscious shall be examined by qualified medical personnel before being admitted to a facility.

b. Detainees suspected of having a contagious or communicable disease shall be separated from other detainees until examined by qualified medical personnel.

c. As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the facility. The intake procedure shall include screening for potential self-injury or suicide. Facility staff with actual knowledge that there is a substantial risk that a detainee intends to commit suicide shall take reasonable measures to abate the risk. The facility shall have a written suicide prevention plan. Essential elements of the plan shall include annual staff training to recognize the potential for suicide, communication between staff, appropriate housing, and intervention procedures.

d. During times when there is no means of immediate access to the district court, a person arrested on a charge constituting a simple misdemeanor and believed by the arresting officer/agency to be mentally ill, and because of that illness is likely to physically injure the person's self or others, shall be admitted to the facility only after the arresting officer/agency has demonstrated a reasonable effort to comply with the emergency hospitalization procedure as provided in Iowa Code section 229.22. The facility shall have a written plan to provide detainees access to services for the detection, diagnosis and treatment of mental illness.

e. Detainees shall be provided with information on how they can obtain necessary medical attention, and the facility's policy and procedure shall also reflect this.

**51.13(7) Medication procedures.**

a. Written policies and procedures pertaining to providing medication shall be established.

b. All prescription medicine shall be securely stored and inventory control practiced. Inventory control shall include documentation of all medication coming into the facility and the amount of medication returned or destroyed when the detainee is released.

c. A written procedure for recording the taking or administering of all medications shall be established.

d. Prescription medication, as ordered by a licensed physician, licensed osteopathic physician, physician assistant or licensed dentist, shall be provided in accordance with the directions of the prescribing physician, licensed osteopathic physician, physician assistant or dentist. Detainees with medication from a personal physician, osteopathic physician, physician assistant or dentist may be evaluated by a physician, osteopathic physician, physician assistant or dentist selected by the facility administrator to determine if the present medication is appropriate.

**51.13(8) Medical records.** A separate medical record shall be maintained for each detainee receiving medical care. The record shall include the illness being treated, medication administered, special diets required, medical isolations and the name of the attending health professional or institution. The record may be kept in the detainee's file jacket but must be labeled "confidential."

**51.13(9) Medication storage.**

a. Detainees' medications shall be stored at the proper temperature, as defined by the following terms:

(1) Room temperature: temperature maintained between 15 degrees centigrade (59 degrees Fahrenheit) and 30 degrees centigrade (85 degrees Fahrenheit).

(2) Cool: temperature maintained between 8 degrees centigrade (46 degrees Fahrenheit) and 15 degrees centigrade (59 degrees Fahrenheit).

(3) Refrigerate: temperature that is thermostatically maintained between 2 degrees centigrade (36 degrees Fahrenheit) and 8 degrees centigrade (46 degrees Fahrenheit). All medication required to be “cool” or “refrigerated” shall be stored in a separate refrigerator or in a separate locked container within a refrigerator that is used for other purposes.

b. Any medications bearing an expiration date may not be administered beyond the expiration date.

c. Expired drugs or drugs not in unit dose packaging, whose administration had been discontinued by the attending physician or physician assistant, shall be destroyed by the facility administrator or designee in the presence of a witness. A record of drug destruction shall be made in each detainee’s medical record. The record shall include the name, the strength and the quantity of the drug destroyed, and the record shall be signed by the facility administrator or designee and by the witness.

d. Medications dispensed by a pharmacy in unit dose packaging may be returned to the dispensing pharmacy pursuant to board of pharmacy rule 657—23.15(124,155A).

e. Facilities utilizing unit dose packaging shall have written policies and procedures providing for the return of drugs so packed to the issuing pharmacy. Policy shall include proper record keeping of disposal.

[ARC 9578B, IAB 6/29/11, effective 8/3/11; ARC 6905C, IAB 2/22/23, effective 3/29/23]

#### **201—51.14(356,356A) General food service requirements.**

**51.14(1) *Detainee being held.*** If a detainee is held over a meal period, a meal of adequate nutrition shall be provided.

**51.14(2) *Daily meals.*** The three meals provided for each 24-hour duration shall be served at reasonable and proper intervals; at least one meal shall be a hot meal. Food must be served at the proper temperature: hot foods shall be reasonably hot and cold foods reasonably cold.

**51.14(3) *Time of serving.*** Meals shall be served at approximately the same time every day.

**51.14(4) *Medical diets.*** Special diets as prescribed by a physician or physician assistant shall be followed and documented.

**51.14(5) *Religious requests.*** When a special diet is requested for a detainee due to a bona fide religious belief, the facility shall meet that need unless the facility can demonstrate that its refusal does not impose a substantial burden on the exercise of the detainee’s religion or that its refusal furthers some compelling interest and is the least restrictive means of furthering that interest.

**51.14(6) *Punishment.*** Deviation from normal feeding procedures shall not be used as punishment.

**51.14(7) *Inspection of facilities for outside food service providers.*** If food service is provided by outside sources, only a facility with a food establishment license or those required to undergo inspection by other statutes shall be utilized to provide these services. The transfer of food shall be done under sanitary conditions (no policy required).

[ARC 6905C, IAB 2/22/23, effective 3/29/23]

#### **201—51.15(356,356A) In-house food services.**

**51.15(1)** Food preparation areas shall be clean and sanitary in accordance with requirements of the state health standards regulating institutional or food establishment operations.

**51.15(2)** All food products shall be stored or refrigerated in compliance with state health standards governing institutional or food establishment operations.

**51.15(3)** Dishes, utensils, pans and trays shall be sanitized after use in accordance with state health standards for food establishments or institutions.

**51.15(4)** Staff shall serve or supervise the serving of all meals. Food handlers must be clean and free of illness or disease.

#### **201—51.16(356,356A) Communication.**

**51.16(1) Telephone calls upon arrest.** Detainees shall be permitted telephone access to their family or an attorney, or both, without unnecessary delay after arrest, at no charge if made within the local calling area, as required by Iowa Code section 804.20.

**51.16(2) Attorneys and ministers.** Attorneys and ministers shall be permitted to visit detainees upon request of the detainee at reasonable hours if security and daily routine are not unduly interrupted.

**51.16(3) General visitation.**

- a. All detainees in normal status shall be allowed reasonable visitation.
- b. Rules shall specify who is allowed to visit and when and how often visitors are allowed.
- c. Facility staff shall document the date and time of visit, name and address of each person visiting, and the name of the detainee visited. Computerized logs are acceptable.
- d. A visit may be denied if reasonable suspicion exists that the visit might endanger the security of the facility. A record shall be made of such denial and the reason(s) therefor.

**51.16(4) Detaining non-U.S. citizens.** When non-U.S. citizens are detained, they shall be advised of the right to have their consular officials notified or the nearest consular officials shall be notified of the detention, whichever is required by the Vienna Convention. Consular officials shall be given access to non-U.S. citizens in the facility and shall be allowed to provide consular assistance. When a facility administrator becomes aware of the death of a non-U.S. citizen, consular officials shall be notified.

**51.16(5) Detainee mail.**

a. Detainees held beyond 24 hours shall be furnished a reasonable amount of writing materials upon request. Jail officials may prohibit a detainee from corresponding with a person who states in writing that the person does not want to correspond with the detainee. This mail restriction does not include a "prior approval" list.

b. A reasonable amount of postage shall be provided to indigent detainees who are held beyond 24 hours for communication with the courts and for at least two letters per week of a personal nature when other means of communication are not available.

c. General correspondence may be opened and inspected; it may be read for security reasons if the detainee is notified of this procedure.

d. Privileged correspondence if so marked may be opened only in the presence of the detainee and then only to detect the presence of contraband; privileged correspondence may not be read except by the detainee. Privileged correspondence is defined as incoming and outgoing mail to or from:

- (1) An attorney;
- (2) A judge;
- (3) The governor of Iowa;
- (4) The ombudsman office;
- (5) A member of the state or federal legislature.

e. Written policy, procedure, and practice require that, excluding weekends and holidays, incoming and outgoing letters be held for no more than 24 hours and packages be held for no more than 48 hours for inspection before delivery to the detainee or post office.

[ARC 3929C, IAB 8/1/18, effective 9/5/18; see Delay note at end of chapter]

**201—51.17(356,356A) Access to the courts.** Detainees shall be provided at their request pertinent sections of the Iowa Code or city ordinance pertaining to their offense and access to attorneys pursuant to rule 201—51.16(356,356A).

**201—51.18(356,356A) Discipline and grievance procedures.**

**51.18(1)** No detainee shall be allowed to have authority or disciplinary control over another detainee.

**51.18(2)** The use of physical force by staff shall be restricted to instances of justifiable self-protection, the protection of others or property, the prevention of escapes or the suppression of disorder, and then only to the degree necessary to overcome resistance. Corporal punishment is forbidden.

**51.18(3)** The following information shall be made available to all detainees and explained to any detainee unable to read English:

a. A set of rules (including sanctions) and regulations pertaining to the conduct of persons in custody.

b. What services are available to them.

c. A detainee grievance procedure which includes at least one level of appeal.

**51.18(4)** Deprivation of clothing, bedding, or hygienic supplies shall not be used as discipline or punishment. These items may be withheld from any detainee who the staff reasonably believes would destroy such items or use them as weapons, for self-injury, to aid in escape, or interfere with the normal operation of the facility.

**201—51.19(356,356A) Records.** The following records shall be maintained by the facility administrator for two years unless a different period is specified.

**51.19(1) Facility calendar.** This record shall contain information required by Iowa Code section 356.6.

**51.19(2) Visitor registration.** This record shall contain the name and address of the person visiting; name of detainee visited; and the date, time and duration of the visit.

**51.19(3) Facility inspection records.** Facility inspection records shall contain the following and be maintained for a minimum period of two years:

a. Fire marshal's certificates.

b. Written reports received from all persons doing official inspections of the facility.

**51.19(4) Medical history intake form.** Notation of injury upon admission shall be included.

**51.19(5) Records of medical care.**

**51.19(6) Injury reports.** Copies of all reports of investigations relating to injuries within the facility shall be maintained by the facility administrator in a separate injury file or referenced in the detainee file by log for a period of five years.

**51.19(7) Disciplinary records.**

**51.19(8) Property receipts.** Property receipts as required by Iowa Code section 804.19 shall be completed and distributed as required.

**51.19(9) Fire and disaster evacuation plan and record(s) of required fire drills.**

**51.19(10) Records of staff training.**

**51.19(11) Disposition of medication.** A record shall be kept of the disposition of prescribed medication not taken by a detainee.

**51.19(12) Supervisory checks.** A record shall be made to document all required supervisory checks of detainees.

**51.19(13) Incident reports.** Records shall be made to document the following:

a. Use of force;

b. Suicide/suicide attempts;

c. Threats to staff, staff assaults, fires, detainee abnormal behavior, any verbal or nonverbal references to suicide and self-mutilation.

d. The state jail inspection unit of the department of corrections shall be notified within 24 hours of any death, attempted suicide, fire, escape, injury to staff or detainees from assaults, use of force and prisoner self-injuries. A copy of the investigative reports and other records shall be given to the state jail inspector upon request.

**51.19(14) Menu records.** This record shall include letters of documentation issued by a qualified dietitian.

[ARC 9578B, IAB 6/29/11, effective 8/3/11]

**201—51.20(356,356A) Nonsecure holds for juveniles.**

**51.20(1) Standards for nonsecure hold areas.** The area to be used to detain the juvenile must be an unlocked area such as a lobby, office or other open room. Additionally, the following minimum procedures must be followed:

a. The juvenile is not physically secured to any stationary object.

b. The juvenile is under continuous visual supervision.

- c. The juvenile has access to bathroom facilities.
- d. A meal or meals shall be provided at usual mealtimes.

**51.20(2) *Supervision of juveniles in nonsecure hold.*** Juveniles in nonsecure hold status (see Iowa Code sections 232.19(2) and 232.22(2)) shall have continuous visual supervision by a qualified adult. The holding facility administrator may contract with an outside agency to perform supervisory functions. Persons performing juvenile supervisory functions must:

- a. Be at least 18 years of age.
- b. Have received a physical prior to employment.
- c. Perform at a staff-to-detainee ratio that will ensure a safe environment for both the juvenile(s) and the staff.
- d. Report any knowledge of child abuse to mandatory child abuse reporters.
- e. Have successfully completed a child abuse and criminal background check.

**51.20(3) *Prohibited acts.*** Each nonsecure site must develop a policy of posted orders which protects juveniles against neglect; exploitation; and degrading punishment such as corporal punishment, verbal abuse, threats, or derogatory remarks about the juvenile or the juvenile's family; binding or tying to restrict movement; enclosing the juvenile in a confined space such as a closet, locked room, or similar cubicle; and deprivation of meals.

**51.20(4) *Attendant nonsecure area operating procedures.***

- a. Attendant shall make certain the juvenile is aware of the policies of the nonsecure holding area.
- b. The personal effects of the juvenile shall be placed in a safe, secure place. A property receipt shall be issued to the juvenile.
- c. All items given to the juvenile are subject to being searched.
- d. Attendant shall pat search the juvenile.

**51.20(5) *Care and treatment.***

a. *Medical.*

(1) No juvenile shall be held who is obviously injured, is obviously physically or mentally ill or, in the judgment of the arresting officer, is under the influence of drugs or intoxicated from the use of alcohol to the point of needing medical attention without first being examined by a medical practitioner.

(2) In an emergency situation or when the juvenile is suffering severe pain or is in danger of loss of life or permanent injury, medical treatment may be administered without parental consent. When none of the above situations exist, parental consent or judicial concurrence must be made before providing medical treatment.

(3) Juveniles suspected of having a contagious or communicable disease shall be isolated from other juveniles.

(4) There shall be at least one person on duty in the facility containing the nonsecure room who is trained in multimedia first aid and CPR.

(5) First-aid kits shall be immediately available.

(6) Any person providing medication shall be trained in the procedure of providing medication.

(7) As part of the admission procedure, a medical history intake form shall be completed. As part of this procedure, an attempt will be made to determine if the juvenile is suicidal by observing behavior and looking for marks or scars which would indicate previous suicide attempts.

(8) There shall be written policies or procedures pertaining to providing medication.

(9) All medication shall be stored according to state pharmaceutical standards and written inventory control maintained. The inventory shall include the starting number of pills, when pills were provided and by whom, the remaining number of pills at the time the juvenile left the facility, the disposition of the remaining pills, and a staff witness to the disposition of the pills.

(10) Special diets as prescribed by a physician or physician assistant shall be followed and documented.

(11) When a special diet is required for an individual due to a bona fide religious belief, the facility shall meet that need.

b. *Communications.*

(1) Juveniles shall be permitted, at no charge, telephone access to their family or an attorney, or both, without unnecessary delay after being taken into custody. Once family or attorney has been contacted, the number of additional calls, if any, will be determined by attendant.

(2) Attorneys and ministers shall be permitted to visit upon request when such visiting will not disrupt security or daily routines of the facility. Determination of additional visits shall be made by attendant.

*c. Safety and sanitation.*

(1) Walls, floors, and ceiling shall be well maintained.

(2) Facility shall be maintained in a pest-free condition.

(3) Clean bedding, including sheets, blankets, and pillowcases, shall be issued to each juvenile who wishes to sleep between the hours of 9 p.m. and 7 a.m.

(4) Soiled clothing which may affect the health of the juvenile shall be exchanged for clean, facility-provided clothing.

(5) An emergency evacuation plan must be conspicuously posted.

(6) There shall not be less than one AA-ABC fire extinguisher in operable condition for each 3,000 square feet of facility on any given floor of the building.

(7) All exits shall be equipped with independent emergency lighting.

(8) Where exits are not immediately accessible from an open floor area, safe and continuous passage aisles or corridors leading directly to every exit shall be maintained and shall be so arranged as to provide access for each juvenile to at least two separate and distinct exits from each floor. A locked exit may be classified as an emergency exit only if necessary keys to locked doors are on the person of the attendant. Elevators shall not be counted as required exits.

(9) A means of fire detection utilizing equipment of a type tested and approved by Underwriters Laboratories shall be installed and maintained in operational condition according to the factory manual. These alarms shall be ceiling-mounted and of such construction to continue in operation during power failure. Alarms shall be tested on at least a monthly basis. Such test shall be documented.

(10) Only fire-resistant mattresses and pillows approved by the state fire marshal's office shall be used.

*d. Staff training requirements.*

(1) Attendants shall be knowledgeable of facility policies and procedures pertaining to juvenile nonsecure holds, and acknowledgment of this shall be made by attendant's dated signature.

(2) Nonsecure hold attendants shall have received instruction in the following areas prior to supervising juveniles in a nonsecure holding area:

1. Role of nonsecure hold attendant.
2. Confidentiality issues.
3. Intake procedures—medical and suicide screening.
4. Communication and listening skills.
5. Dealing with a depressed or suicidal juvenile.
6. Overview of state and federal law.
7. Provision of medication.
8. Gentle self-defense.
9. Child abuse identification.

*e. Juvenile supervision.*

(1) An attendant shall be in the presence of all juveniles held at all times. Same-sex attendant or staff shall be present when juveniles perform bodily functions/shower.

(2) A log shall be maintained at half-hour intervals reflecting the juvenile's activities and behavior.

*f. Records.* The following records shall be maintained by the facility for a period of at least two years:

- (1) Medical history intake form.
- (2) Records of medical care.
- (3) Injury reports.
- (4) Food served.

- (5) Records of staff training.
- (6) Disposition of medication.
- (7) Individual log.
- (8) Any use of force reports.
- (9) Any suicide or suicide attempts reports.

*g. Incident reports.* Reports of the following incidents shall be sent to the state jail inspection unit, department of corrections, within 24 hours of incident:

- (1) Any injury to juvenile or staff that requires medical attention.
- (2) Any use of force by staff.
- (3) Any attempted suicide.

The state jail inspection unit, department of corrections, shall be notified within five hours of any successful juvenile suicide that occurred in a nonsecure hold area.

**51.20(6) Exemption from nonsecure hold standards.** Any requests for exemption from nonsecure hold standards shall be submitted according to the provisions under 201—Chapter 7, Iowa Administrative Code.

[ARC 6905C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement Iowa Code sections 80B.11A, 356.36 and 356.43 and chapter 356A.

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**ECONOMIC DEVELOPMENT AUTHORITY[261]**

[Created by 1986 Iowa Acts, chapter 1245]

[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

[Prior to 9/7/11, see Economic Development, Iowa Department of[261];  
renamed Economic Development Authority by 2011 Iowa Acts, House File 590]

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CHAPTER 28  
RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM

[Prior to 02/22/23, see Economic Development Authority[261] Ch 220]

**261—28.1(88GA,SF608) Purpose.** The purpose of the rural housing needs assessment grant program is to support the use of publicly available information and support community efforts to interpret hard data with supplemental information and to help communities implement changes to development codes, local ordinances, and housing incentives according to the community's needs.  
[ARC 5092C, IAB 7/15/20, effective 8/19/20; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—28.2(88GA,SF608) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa community applying for financial assistance under the program.

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

“*Community*” means a county, an incorporated city, or a community designee.

“*Community designee*” means a legal entity established or designated by a county or incorporated city in an agreement pursuant to Iowa Code chapter 28E for the purposes of evaluating housing needs.

“*Director*” means the director of the authority.

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the rural housing needs assessment grant program established in this chapter.

[ARC 5092C, IAB 7/15/20, effective 8/19/20; ARC 5693C, IAB 6/16/21, effective 7/21/21; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—28.3(88GA,SF608) Program description.**

**28.3(1) Amount, form, and timing of assistance.** The amount of assistance awarded will be determined by the authority and will be based on the total amount of funds available to the authority for the program and the costs specified in the application. The authority will establish a maximum grant award per application and a minimum grant award per application for each fiscal year in which funding is available. The authority will provide financial assistance in the form of a grant. Funds will be disbursed on a reimbursement basis for expenses incurred by the applicant after approval of an award by the director.

**28.3(2) Application.**

*a. Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority.

*b. Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

*c. Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided to the authority.

**28.3(3) Use of funds.**

*a.* An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

*b.* For purposes of this subrule, “costs directly related” does not include any expenses specified as ineligible in the agreement required pursuant to this chapter.

[ARC 5092C, IAB 7/15/20, effective 8/19/20; ARC 5693C, IAB 6/16/21, effective 7/21/21; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—28.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.**

**28.4(1) Program eligibility.** An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

- a. The applicant must be an Iowa community as defined in rule 261—28.2(88GA,SF608).
- b. An applicant that is an incorporated city must have a population of 20,000 or less and shall not be contiguous to a city with a population of 40,000 or greater. An applicant that is a county shall be one of the 88 least populous counties in the state. An applicant that is a community designee shall have entered an agreement pursuant to Iowa Code chapter 28E with an incorporated city or county meeting the population criteria in this paragraph.
- c. An eligible applicant will be allowed to submit only one application per application period.
- d. The applicant must demonstrate the capacity for administering a grant.
- e. The applicant must demonstrate the feasibility of the project's proposed scope and timeline with the funds requested.
- f. The applicant must identify and describe other sources of funding for the proposed assessment and related activities.
- g. The applicant must identify any partner organizations that will be utilized in interpreting and implementing the data collected through the assessment.
- h. The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.

**28.4(2) Application scoring criteria.** All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority, which may include the following:

- a. Applicant readiness and partnerships. The application should demonstrate that the applicant is actively addressing housing needs and has identified diverse partners.
- b. Project goals and timeline. The application should demonstrate clearly defined, measurable goals and a timeline for execution of the project.
- c. Project budget and financing. The application should include a complete budget that provides clear justification for all costs. The application should also demonstrate secured financing and that the cash match requirement has been met.
- d. Additional points. Extra consideration is provided to applications that have projects supporting housing initiatives endorsed by the Iowa great places citizens advisory board, as well as those located in a community with a population of 10,000 or less.

**28.4(3) Funding decisions.** Funding decisions will be made using the following process:

- a. *Staff review.* Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.
- b. *Grant committee review and recommendation.* Following staff review, a grant committee will review and score applications using the criteria in subrule 28.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.
- c. *Director's decision.* The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee's recommendation. The director may approve, deny, or defer funding for any application.
- d. *Notification.* Each applicant will be notified in writing of the funding decision within 15 days of the director's decision.

[ARC 5092C, IAB 7/15/20, effective 8/19/20; ARC 5693C, IAB 6/16/21, effective 7/21/21; ARC 6319C, IAB 5/18/22, effective 6/22/22; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—28.5(88GA,SF608) Agreement required.**

**28.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish

the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

**28.5(2)** The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

**28.5(3)** The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[ARC 5092C, IAB 7/15/20, effective 8/19/20; ARC 6892C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

[Filed ARC 5092C (Notice ARC 4774C, IAB 11/20/19), IAB 7/15/20, effective 8/19/20]

[Filed ARC 5693C (Notice ARC 5535C, IAB 3/24/21), IAB 6/16/21, effective 7/21/21]

[Filed ARC 6319C (Notice ARC 6202C, IAB 2/23/22), IAB 5/18/22, effective 6/22/22]

[Filed ARC 6892C (Notice ARC 6737C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]



CHAPTER 29  
RURAL INNOVATION GRANT PROGRAM  
[Prior to 02/22/23, see Economic Development Authority[261] Ch 221]

**261—29.1(88GA,SF608) Purpose.** The purpose of the rural innovation grant program is to support creative, nontraditional ideas that focus on current issues and challenges faced by rural communities associated with the themes of community investment, growth, and connection.  
[ARC 5093C, IAB 7/15/20, effective 8/19/20; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—29.2(88GA,SF608) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa business, college, university, city, county, council of governments organization established by Iowa Code chapter 28H, K-12 educational institution, or private nonprofit agency or foundation applying for financial assistance under the program. A business will be considered an Iowa business if the business is incorporated in the state of Iowa or authorized to do business in the state of Iowa.

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

“*Director*” means the director of the authority.

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the rural innovation grant program established in this chapter.

“*Project*” means a program or activity undertaken in and for the benefit of a community in Iowa with a population of 20,000 or less and not contiguous to a city with a population of 40,000 or greater.  
[ARC 5093C, IAB 7/15/20, effective 8/19/20; ARC 6319C, IAB 5/18/22, effective 6/22/22; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—29.3(88GA,SF608) Program description.**

**29.3(1) Amount, form, and timing of assistance.** The amount of assistance awarded will be determined by the authority based on the total amount of funds available to the authority for the program and based on the project details. The authority will establish a maximum grant award per application and a minimum grant award per application for each fiscal year in which funding is available. The authority will provide financial assistance in the form of a grant. Funds will be disbursed on a reimbursement basis for expenses incurred by the applicant after approval of an award by the director.

**29.3(2) Application.**

*a. Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority.

*b. Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

*c. Frequency of application.* An eligible applicant may only be named as the primary entity on one application per application period. However, an applicant who has applied as the primary entity for an application may also be named as a partner on additional applications.

*d. Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

**29.3(3) Use of funds.**

*a.* An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

b. For purposes of this subrule, “costs directly related” does not include ineligible expenses such as international travel, domestic travel outside the state of Iowa, insurance, training or professional development courses, and any other expenses specified as ineligible in the agreement required pursuant to this chapter.

[ARC 5093C, IAB 7/15/20, effective 8/19/20; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—29.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.**

**29.4(1) Program eligibility.** An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

- a. The applicant must meet the definition of “applicant” in rule 261—29.2(88GA,SF608).
- b. If the applicant is not a local government entity, the applicant must demonstrate support from the local government entity as evidenced by a letter of support.
- c. The applicant must serve a city that has a population of 20,000 or less and that is not contiguous to a city with a population of 40,000 or greater.
- d. The applicant must demonstrate the capacity for administering a grant.
- e. The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.
- f. The applicant must demonstrate that the project does not consist of ongoing expenses for existing projects or programs.

**29.4(2) Application scoring criteria.** All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority, which may include the following:

- a. Alignment with program purpose. The application should demonstrate that the project aligns with the program purpose by developing a nontraditional, concrete solution to increase rural community vibrancy.
- b. Innovation. The application should demonstrate that the project will address rural challenges through exceptional and creative solutions.
- c. Replicability. The application should demonstrate a clear opportunity for successful replication in rural communities across the state.
- d. Roles defined. The application should identify and describe the roles of all partners involved in the project.
- e. Project goals and timeline. The application should demonstrate clearly defined, measurable goals and a timeline for execution of the project.
- f. Project budget and financing. The application should include a complete budget that provides clear justification for all costs. The application should also demonstrate secured financing and that the cash match requirement has been met.
- g. Additional points. Extra consideration is provided to projects that have been endorsed by the Iowa great places citizens advisory board (additional five points added to score total), as well as those located in a community with a population of 5,000 or less.

**29.4(3) Funding decisions.** Funding decisions will be made using the following process:

- a. *Staff review.* Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.
- b. *Grant committee review and recommendation.* Following staff review, a grant committee will review and score applications using the criteria in subrule 29.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.
- c. *Director’s decision.* The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee’s recommendation. The director may approve, deny, or defer funding for any application.

*d. Notification.* Each applicant will be notified in writing of the funding decision within 15 days of the director's decision.

[ARC 5093C, IAB 7/15/20, effective 8/19/20; ARC 6319C, IAB 5/18/22, effective 6/22/22; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—29.5(88GA,SF608) Agreement required.**

**29.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

**29.5(2)** The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

**29.5(3)** The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[ARC 5093C, IAB 7/15/20, effective 8/19/20; ARC 6892C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

[Filed ARC 5093C (Notice ARC 4775C, IAB 11/20/19), IAB 7/15/20, effective 8/19/20]

[Filed ARC 6319C (Notice ARC 6202C, IAB 2/23/22), IAB 5/18/22, effective 6/22/22]

[Filed ARC 6892C (Notice ARC 6737C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]



CHAPTER 30  
EMPOWER RURAL IOWA PROGRAM  
[Prior to 02/22/23, see Economic Development Authority[261] Ch 222]

**261—30.1(89GA, HF871, HF2564) Purpose.** The empower rural Iowa initiative was created by Executive Order Number 3 dated July 18, 2018, which directs the authority to provide staffing and administrative assistance for the initiative and its associated task forces.  
[ARC 5963C, IAB 10/6/21, effective 9/17/21; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—30.2(89GA, HF871, HF2564) Definitions.** As used in this chapter, unless the context otherwise requires:

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

“*Director*” means the director of the authority.

“*Empower rural Iowa initiative*” or “*initiative*” means the initiative created by Executive Order Number 3 dated July 18, 2018.

“*Rural community*” means either an Iowa city with a population of 20,000 or less and that is not contiguous to a city with a population of 40,000 or greater, or an Iowa county that is one of the 88 least populous counties in the state.

[ARC 5963C, IAB 10/6/21, effective 9/17/21; ARC 6892C, IAB 2/22/23, effective 3/29/23]

**261—30.3(89GA, HF871, HF2564) Eligible uses of funds.**

**30.3(1)** Funds appropriated to the authority for the empower rural Iowa program shall be used to address the challenges and opportunities of rural communities. Uses of funds shall be approved by the director.

**30.3(2)** Eligible uses of funds include the following:

- a. The rural housing needs assessment grant program administered pursuant to 261—Chapter 28;
- b. The rural innovation grant program administered pursuant to 261—Chapter 29;
- c. Support for entrepreneurship and cooperative business models for businesses in rural communities;
- d. Leadership development training for representatives of rural communities;
- e. Education and training opportunities relating to succession planning for businesses in rural communities;
- f. Promotion of e-commerce opportunities for businesses in rural communities; and
- g. Implementation of additional recommendations published by the investing in rural Iowa task force, the growing rural Iowa task force, and the connecting rural Iowa task force created by the empower rural Iowa initiative and administered by the authority.

[ARC 5963C, IAB 10/6/21, effective 9/17/21; ARC 6892C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement 2021 Iowa Acts, House File 871, and 2022 Iowa Acts, House File 2564.

[Filed Emergency After Notice ARC 5963C (Notice ARC 5789C, IAB 7/28/21), IAB 10/6/21,  
effective 9/17/21]

[Filed ARC 6892C (Notice ARC 6737C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]



CHAPTER 56  
EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

**261—56.1(85GA, HF648) Purpose.** The authority is authorized to provide financial and technical assistance to businesses interested in establishing an employee stock ownership plan (ESOP). The purpose of this chapter is to create a program that will assist a business by (1) helping to determine whether an ESOP is a feasible form of ownership and (2) providing assistance to reduce the cost of forming an ESOP when it is feasible.

[ARC 1249C, IAB 12/25/13, effective 1/29/14]

**261—56.2(85GA, HF648) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

“*Applicant*” means a business applying for assistance under the program.

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

“*Business*” means a corporation eligible to become a qualified Iowa ESOP.

“*Director*” means the director of the authority.

“*Financial assistance*” means a payment made by the authority to an applicant approved for funding under the program.

“*Program*” means the ESOP formation assistance program established pursuant to this chapter.

“*Qualified Iowa ESOP*” means the same as defined in the department of revenue’s rules for the determination of net income at 701—subrule 40.38(10).

[ARC 1249C, IAB 12/25/13, effective 1/29/14; ARC 6891C, IAB 2/22/23, effective 3/29/23]

**261—56.3(85GA, HF648) Program description.**

**56.3(1) Amount, form, and timing of assistance.** The program provides financial assistance to businesses interested in establishing an ESOP. An applicant to the program may be approved for financial assistance in an amount equal to 50 percent of the cost incurred for obtaining a feasibility study conducted by an independent financial professional. The total amount of financial assistance provided to an applicant will not exceed \$25,000. The financial assistance may be provided in two tranches. The first tranche will be provided as a reimbursement of 25 percent of the cost of a feasibility study and will be remitted upon completion of the feasibility study. The second tranche will be provided as a reimbursement of 25 percent of the cost of the feasibility study and will be remitted only upon completion of an ESOP formation. A business that does not successfully complete the formation of an ESOP will not receive the second tranche. A business will be required to provide to the authority documentation establishing the costs incurred and the successful completion of all necessary transactions.

**56.3(2) Application.**

*a.* Each fiscal year in which funding is available, the authority will accept applications for assistance under the program and make funding decisions on a rolling basis.

*b.* Information on submitting an application under the program may be obtained by contacting the authority.

**56.3(3) Approval of assistance.** Authority staff will consider, evaluate, and recommend applications for financial assistance under the program. The authority may consult with an ESOP advisory panel consisting of individuals selected by the director who have demonstrated expertise in the formation and operation of ESOPs as needed. Authority staff will review applications for financial assistance and score the applications according to the criteria described in rule 261—56.4(85GA, HF648). Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision.

**56.3(4) Contract required.** If the director approves an applicant for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

**56.3(5) Use of funds.** An applicant shall use funds provided only for the purpose of reducing the cost of services of an independent financial professional for evaluating the feasibility of an ESOP and forming an ESOP. The authority may require documentation or other information establishing the actual costs incurred. The financial assistance shall be provided to the applicant after the costs are incurred and on a reimbursement basis. Costs incurred prior to approval of financial assistance will not be eligible for reimbursement.

[ARC 1249C, IAB 12/25/13, effective 1/29/14; ARC 6891C, IAB 2/22/23, effective 3/29/23]

**261—56.4(85GA, HF648) Program eligibility, application scoring, and funding decisions.**

**56.4(1) Program eligibility.** To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a business interested in establishing an ESOP. To establish that this criterion is met, the applicant shall state the reasons for its interest in establishing an ESOP.

b. The applicant shall be, or be willing to become, an IRS subchapter C or subchapter S corporation. To establish that this criterion is met, the applicant shall include a copy of its articles and documentation establishing the applicable IRS election. An applicant not yet a corporation may be required to execute a letter of intent.

c. The applicant shall have a valuation that is sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide information estimating the value of the business and information about the source of that estimate. This information may be a good-faith estimate. The authority will not set a specific minimum valuation; however, applicants are advised that a business with valuation less than \$5 million may not be considered a feasible candidate for an ESOP.

d. The applicant shall have a number of employees, eligible employee types, and a total payroll that are sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant payroll information. The authority will not set a specific minimum number of employees; however, applicants are advised that a business with fewer than 25 employees may not be a feasible candidate for an ESOP.

e. The applicant shall have a cash flow level sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant financial statements. The authority will not set a minimum cash flow level; however, applicants are advised that a business with cash flow less than \$500,000 may not be a feasible candidate for an ESOP.

f. The applicant is not a retail business.

g. The applicant is not a publicly traded company.

h. The applicant has not completed a feasibility study for purposes of exploring an ESOP formation in the three years prior to application for the program. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.

**56.4(2) Application scoring.** A business meeting the requirements of subrule 56.4(1) may apply to the authority for financial assistance under the program. The authority will review applications for completeness. The authority may engage an ESOP advisory panel for assistance in evaluating the applications as needed. As part of the evaluation process, an applicant may be required to interview with authority staff and with members of the ESOP advisory panel about the applicant's business, future plans, and interest in forming an ESOP. Authority staff will evaluate the applications and give them an average numerical score between 0 and 100. The numerical score will reflect the extent to which an applicant is a feasible candidate for an ESOP. In determining the numerical score, the authority will take into account the extent to which each applicant meets the requirements of subrule 56.4(1). The authority will keep records of the scoring process and make those records available to applicants.

**56.4(3) Funding decisions.** Each application, including its numerical score, will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the score and the funding recommendation of authority staff.

The director may not approve funding for an application that receives an average score of less than 50 points.

[ARC 1249C, IAB 12/25/13, effective 1/29/14; ARC 6891C, IAB 2/22/23, effective 3/29/23]

**261—56.5(85GA, HF648) Contract required.** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority. The agreement shall establish the terms on which the financial assistance is to be provided.

[ARC 1249C, IAB 12/25/13, effective 1/29/14]

These rules are intended to implement 2013 Iowa Acts, House File 648, section 9.

[Filed ARC 1249C (Notice ARC 1021C, IAB 9/18/13), IAB 12/25/13, effective 1/29/14]

[Filed ARC 6891C (Notice ARC 6738C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]



CHAPTERS 217 to 219  
Reserved

CHAPTER 220  
RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM  
Transferred to 261—Chapter 28, **ARC 6892C**, IAB 02/22/23

CHAPTER 221  
RURAL INNOVATION GRANT PROGRAM  
Transferred to 261—Chapter 29, **ARC 6892C**, IAB 02/22/23

CHAPTER 222  
EMPOWER RURAL IOWA PROGRAM  
Transferred to 261—Chapter 30, **ARC 6892C**, IAB 02/22/23

CHAPTERS 223 to 310  
Reserved

PART XI  
Reserved

CHAPTER 311  
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION  
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 13

CHAPTER 312  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
RETAIL MOTOR FUEL SITES  
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 14

CHAPTER 313  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
BIODIESEL TERMINAL GRANTS  
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 15

CHAPTER 314  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION  
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 16

CHAPTERS 315 to 399  
Reserved



CHAPTER 12  
LOW-INCOME HOUSING TAX CREDITS

**265—12.1(16) Qualified allocation plans.**

**12.1(1) Four percent qualified allocation plan.** The qualified allocation plan titled Iowa Finance Authority Low-Income Housing Tax Credit Program 2023 4% Qualified Allocation Plan (“4% QAP”) dated December 7, 2022, shall be the qualified allocation plan for the allocation of 4 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 4% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 4% QAP does not include any amendments or editions created subsequent to December 7, 2022.

**12.1(2) Nine percent qualified allocation plan.** The qualified allocation plan titled Iowa Finance Authority Low-Income Housing Tax Credit Program 2023 9% Qualified Allocation Plan (“9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 9% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any amendments or editions created subsequent to November 2, 2022.

[ARC 8266B, IAB 11/4/09, effective 12/9/09; ARC 8947B, IAB 7/28/10, effective 7/6/10; ARC 9279B, IAB 12/15/10, effective 1/19/11; ARC 9950B, IAB 12/28/11, effective 2/1/12; ARC 0427C, IAB 10/31/12, effective 12/5/12; ARC 1139C, IAB 10/30/13, effective 12/4/13; ARC 1700C, IAB 10/29/14, effective 12/3/14; ARC 2225C, IAB 10/28/15, effective 12/2/15; ARC 2723C, IAB 9/28/16, effective 11/2/16; ARC 3338C, IAB 9/27/17, effective 11/1/17; ARC 4037C, IAB 9/26/18, effective 10/31/18; ARC 4794C, IAB 12/4/19, effective 1/8/20; ARC 5717C, IAB 6/16/21, effective 5/28/21; ARC 6721C, IAB 12/14/22, effective 11/10/22; ARC 6899C, IAB 2/22/23, effective 3/29/23]

**265—12.2(16) Location of copies of the plans.**

**12.2(1) 4% QAP.** The 4% QAP can be reviewed and copied in its entirety on the authority’s website at [www.iowafinance.com](http://www.iowafinance.com). Copies of the 4% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s website. The 4% QAP incorporates by reference IRC Section 42 and the regulations in effect as of December 7, 2022. Additionally, the 4% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s website.

**12.2(2) 9% QAP.** The 9% QAP can be reviewed and copied in its entirety on the authority’s website at [www.iowafinance.com](http://www.iowafinance.com). Copies of the 9% QAP, the application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s website. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of November 2, 2022. Additionally, the 9% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s website.

[ARC 8266B, IAB 11/4/09, effective 12/9/09; ARC 8947B, IAB 7/28/10, effective 7/6/10; ARC 9279B, IAB 12/15/10, effective 1/19/11; ARC 9950B, IAB 12/28/11, effective 2/1/12; ARC 0427C, IAB 10/31/12, effective 12/5/12; ARC 1139C, IAB 10/30/13, effective 12/4/13; ARC 1700C, IAB 10/29/14, effective 12/3/14; ARC 2225C, IAB 10/28/15, effective 12/2/15; ARC 2723C, IAB 9/28/16, effective 11/2/16; ARC 3338C, IAB 9/27/17, effective 11/1/17; ARC 4037C, IAB 9/26/18, effective 10/31/18; ARC 4794C, IAB 12/4/19, effective 1/8/20; ARC 5717C, IAB 6/16/21, effective 5/28/21; ARC 6721C, IAB 12/14/22, effective 11/10/22; ARC 6899C, IAB 2/22/23, effective 3/29/23]

**265—12.3(16) Compliance manual.** Rescinded ARC 1700C, IAB 10/29/14, effective 12/3/14.

**265—12.4(16) Location of copies of the manual.** Rescinded ARC 1700C, IAB 10/29/14, effective 12/3/14.

These rules are intended to implement Iowa Code section 16.35.

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CHAPTER 177  
IN-HOME HEALTH-RELATED CARE

[Prior to 7/1/83, Social Services[770] Ch 148]  
[Previously appeared as Ch 148—renumbered IAB 2/29/84]  
[Prior to 2/11/87, Human Services [498]]

**441—177.1(249) In-home health-related care.** In-home health-related care is a program designed to provide nursing care in an individual's own home, as defined in rule 441—177.2(249), to an individual whose physical, developmental, or mental health prevents independent self-care.  
[ARC 6720C, IAB 11/30/22, effective 2/1/23]

**441—177.2(249) Definitions.**

*"Client participation"* has the meaning assigned to it in rule 441—177.10(249).

*"Nursing care"* includes skilled services and personal care services.

*"Own home"* means an individual's house, apartment, or other living arrangement intended for single or family residential use.

*"Personal care services"* includes:

1. Services that assist a client with the activities of daily living, such as, but not limited to, helping the client with bathing, toileting, getting in and out of bed, ambulation, hair care, oral hygiene and administering medications that are physician-ordered but ordinarily self-administered.
2. Services that help or retrain the client in necessary skills for daily living.
3. Incidental household services that are essential to the client's health care at home and are necessary to prevent or postpone institutionalization.

*"Skilled nursing services"* are services for which an individualized assessment of a patient's clinical condition demonstrates that the specialized judgment, knowledge, and skills of a registered nurse or, when provided by regulation, a licensed practical (vocational) nurse ("skilled care") are necessary.

*"Skilled services"* include skilled nursing services or other services that, based on a physician's certification, are required to be performed under the supervision of a physician, nurse practitioner, clinical nurse specialist, or physician assistant.

*"Supervising practitioner"* means a physician, nurse practitioner, clinical nurse specialist, or physician assistant qualified to supervise skilled services.

[ARC 6720C, IAB 11/30/22, effective 2/1/23]

**441—177.3(249) Service criteria.**

**177.3(1) Skilled services.** Skilled services must be certified by a physician as provided in rule 441—177.6(249) and must be supervised by a supervising practitioner.

**177.3(2) Personal care services.** Personal care services must be certified by a physician as provided in rule 441—177.6(249). Personal care services do not require supervision by a supervising practitioner.  
[ARC 6720C, IAB 11/30/22, effective 2/1/23; Editorial change: IAC Supplement 2/22/23]

**441—177.4(249) Eligibility and application.**

**177.4(1) Eligibility.** To be eligible for in-home health-related care:

a. The individual must be eligible for supplemental security income in every respect except for income.

b. A physician must certify in accordance with rule 441—177.6(249) that the individual requires either skilled services or personal care services and that those services can be provided in the individual's own home. The certification shall be provided using Form 470-0673.

c. The individual shall live in the individual's own home. Notwithstanding the foregoing, an individual will remain eligible for a period not to exceed 15 days in any calendar month when the client is temporarily absent from the client's home.

d. The individual shall obtain a physical examination report annually and shall be under the supervision of a physician.

e. The required skilled services or personal care services must not be available under any other state or federal program.

*f.* The countable income of the individual and spouse living in the home shall be limited to \$480.55 per month if one needs care or \$961.10 if both need care, after the following disregards from gross income:

(1) The amount of the basic supplemental security income standard for an individual or a couple, as applicable.

(2) When income is earned, \$65.00 plus one-half of any remaining income.

(3) The amount of the supplemental security income standard for a dependent plus any established unmet medical needs, for each dependent living in the home. Any income of the dependent shall be applied to the dependent's needs before making this disregard.

(4) The amount of the established medical needs of the ineligible spouse which are not otherwise met.

(5) The amount of the established medical needs of the applicant or recipient which are not otherwise met and would not be met if the individual were eligible for the medical assistance program.

*g.* Income for children.

(1) All income received by the parents in the home shall be deemed to the child with the following disregards:

1. The amount of the basic supplemental security income standard for an individual when there is one parent in the home or for a couple when there are two parents in the home.

2. The amount of the basic supplemental security income standard for a dependent for each ineligible child in the home.

3. The amount of the unmet medical needs of the parents and ineligible dependents.

4. When all income is earned, an additional basic supplemental security income standard for an individual in a one-parent home or for a couple in a two-parent home.

5. When the income is both earned and unearned, \$65.00 plus one-half of the remainder of the earned income.

(2) The countable income of the child shall be limited to \$480.55 per month after the following disregards from gross income:

1. The amount of the basic supplemental security income standard for an individual.

2. The amount of the established medical needs of the child which are not otherwise met and would not be met if the child were eligible for the medical assistance program.

3. One-third of the child support payments received from an absent parent.

**177.4(2) Application.** Application for in-home health-related care shall be made on Form 470-5170 or 470-5170(S) and submitted to the department. An eligibility determination shall be completed within 30 days from the date of the application, unless one or more of the following conditions exist:

*a.* An application has been filed and is pending for federal supplemental security income benefits.

*b.* The application is pending because the department has not received information, which is beyond the control of the client or the department.

*c.* The application is pending due to the disability determination process performed through the department.

*d.* The application is pending because the provider agreement has not been completed and completion is beyond control of the client. When the provider agreement cannot be completed due to the client's failure to locate a provider, applications shall not be held pending beyond 60 days from the date of application.

[ARC 7549B, IAB 2/11/09, effective 4/1/09; ARC 5019C, IAB 4/8/20, effective 5/13/20; ARC 6720C, IAB 11/30/22, effective 2/1/23]

#### **441—177.5(249) Qualifications of providers of health care services.**

**177.5(1) Age.** The provider shall be at least 18 years of age.

**177.5(2) Health assessment.** The provider shall obtain certification on Form 470-0672 that the provider is physically and emotionally capable of providing assistance to another person whose physical, developmental or mental health prevents independent self-care.

*a.* The certification shall be based on an examination performed by:

(1) A physician; or

(2) An advanced registered nurse practitioner or physician assistant if the nurse practitioner or physician assistant is working under the direction of a physician.

*b.* If the provider works for an agency, the practitioner performing the examination may not be employed by the same agency.

*c.* The practitioner conducting the examination shall sign the certification.

*d.* The certification shall be submitted to the department service worker:

(1) Before the provider agreement is signed, and

(2) Annually thereafter.

**177.5(3) *Qualifications.*** The provider shall be qualified by training and experience to carry out the health care plan as specified in subrule 177.7(1).

**177.5(4) *Relative.*** The provider may be related to the client, so long as the provider is not a member of the family as defined in rule 441—130.1(234).

[ARC 8912B, IAB 6/30/10, effective 9/1/10; ARC 5019C, IAB 4/8/20, effective 5/13/20; ARC 6720C, IAB 11/30/22, effective 2/1/23]

#### **441—177.6(249) Physician’s certification.**

**177.6(1) *Certification requirements.*** A physician must certify on Form 470-0673:

*a.* That the skilled services or personal care services are required by the person’s physical, developmental or mental health;

*b.* The specific skilled services or personal care services required, the method of providing those services, and the expected duration of services; and

*c.* That the required skilled services and personal care services can be delivered in the individual’s own home.

**177.6(2) *Certification review.*** After certification and any subsequent recertification, a physician must review the certification and withdraw, renew, or amend the existing certification:

*a.* No later than the 180th day after the existing certification;

*b.* More frequently than the 180th day after the existing certification if required by the physician, the service worker, or a supervising practitioner; or

*c.* Upon notification of initiation of Medicaid waiver services.

[ARC 6720C, IAB 11/30/22, effective 2/1/23]

#### **441—177.7(249A) Service worker duties.**

**177.7(1) *Service plan.***

*a.* In consultation with the client’s case manager and any supervising health practitioner, the service worker shall create a complete service plan for the client. The plan must avoid duplication of services and include all of the following:

(1) All of the services certified by a physician under rule 441—177.6(249).

(2) Payer sources. In-home health-related care shall be provided only when other programs cannot meet the client’s need.

(3) Level of service needs.

(4) Service history. If the client is being transferred from a medical hospital or long-term care facility, the service worker shall also obtain a transfer document describing the client’s current care plan.

*b.* In consultation with the client’s case manager and any supervising health practitioner, the service worker shall review and update the service plan on or before the ninetieth day following the creation of or previous review of the service plan. The updated service plan must comply with paragraph 177.7(1)“*a.*”

**177.7(2) *Change in condition.*** If the service worker becomes aware of any changes in the individual’s condition, including discharge from a facility, that could require a change in the services provided, the service worker shall ensure that a physician reviews the existing certification and that the existing certification is either withdrawn, renewed, or amended.

**177.7(3) *Service documentation.***

*a.* A service worker shall review the service documentation submitted by the client or provider, including any requests for supplementation of services.

*b.* If there are concerns as a result of such a review, there will be a change in the service plan.  
[ARC 6720C, IAB 11/30/22, effective 2/1/23; Editorial change: IAC Supplement 2/22/23]

#### **441—177.8(249) Supervising practitioner duties.**

**177.8(1) *Instruction.*** The supervising practitioner shall provide instruction specific to each patient and the services each patient is receiving, including but not limited to instruction on documentation the worker should be creating and instruction on warning signs of which the worker should be aware.

**177.8(2) *Schedule for reviewing documentation.*** The supervising practitioner shall set up a schedule for reviewing documentation that is specific to the services being provided to that particular patient and shall review the documentation according to the schedule.

##### **177.8(3) *Medical records.***

*a.* The supervising practitioner shall keep appropriate medical records, a copy of the service plan, and the physician's certification in the supervising practitioner's case file. In addition, the medical records shall include, whenever appropriate, transfer forms, physician's orders, progress notes, drug administration records, treatment records, and incident reports.

*b.* The supervising practitioner shall make all medical records available to the service worker, the client, and the client's legal representative.

*c.* The supervising practitioner shall ensure that, upon termination of the in-home care plan, the medical records are transferred to the county office of the department of human services or the office of the public health nurse.

*d.* The department of human services or the office of the public health nurse shall retain medical records transferred to it under paragraph 177.8(3) "c" for five years or, if an audit is commenced within the five years, until completion of that audit. During the period of retention, the department of human services or the office of the public health nurse shall make the medical records available to the service worker.

[ARC 6720C, IAB 11/30/22, effective 2/1/23]

#### **441—177.9(249) Written agreements.**

**177.9(1) *Independent contractor.*** The provider shall be an independent contractor and shall not be an agent, employee or servant of the state of Iowa, the Iowa department of human services, or any of its employees or clients.

**177.9(2) *Liability coverage.*** All professional health care providers shall have adequate liability coverage consistent with their responsibilities, since the department of human services assumes no responsibility for, or liability for, individuals providing care.

##### **177.9(3) *Provider agreement.***

*a.* The client and the provider shall enter into an agreement using Form 470-0636 prior to the provision of service. Any reduction to the state supplemental assistance program shall be applied to the maximum amount paid by the department of human services as stated in the provider agreement by using the separate amendment to provider agreement form.

*b.* Written instructions for dealing with emergency situations shall be completed by the service worker and included in the provider agreement, which shall be maintained in the client's home and in the county department of human services office. The instructions shall include:

(1) The name and telephone number of the client's physician, the nurse, responsible family members or other significant persons, and the service worker;

(2) Information as to which hospital to utilize; and

(3) Information as to which ambulance service or other emergency transportation to utilize.

[ARC 5019C, IAB 4/8/20, effective 5/13/20; ARC 6720C, IAB 11/30/22, effective 2/1/23]

#### **441—177.10(249) Payment.**

**177.10(1) *Payment approved.*** Notwithstanding 42 U.S.C. 1382(c)(7), after the service manager or designee approves the service plan, payment is effective as of the later of (1) the date of the application, or (2) the date all eligibility requirements are met and qualified health care services are provided.

##### **177.10(2) *Client participation.***

*a.* Except as provided in paragraph 177.10(2)“*b*,” all income remaining after excluding the amounts identified in paragraphs 177.4(1)“*f*” and “*g*” will be considered income available for services (“client participation”) and the in-home health-related care (IHHRC) program shall pay only the cost of eligible services that exceeds client participation up to the maximum benefit payable.

*b.* When the first month of service is less than a full month, there is no client participation for that month. Payment will be made for the actual days of service provided according to the agreed-upon rate up to the maximum benefit payable.

**177.10(3) *Maximum benefit payable.*** The maximum benefit payable for in-home health-related care services inclusive of all services for all providers is the reasonable charges for such services up to and including \$480.55. The provider shall accept the maximum benefit payable and shall not charge the client or others in excess of that benefit.

**177.10(4) *Payment.*** The client or the person legally designated to handle the client’s finances shall be the sole payee for payments made under the program and shall be responsible for making payment to the provider except when the client payee becomes incapacitated or dies while receiving service.

*a.* The department shall have the authority to issue one payment to a provider on behalf of a client payee who becomes incapacitated or dies while receiving service.

*b.* When continuation of an incapacitated client payee in the program is appropriate, the department shall assist the client and the client’s family to legally designate a person to handle the client’s finances. Guardians, conservators, protective or representative payees, or persons holding power of attorney are considered to be legally designated.

*c.* Temporary absence from home. Payment will not be authorized for over 15 days for any continuous absence whether or not the absence extends into a succeeding month or months.

**177.10(5) *Reasonable charges.*** Payment will be made only for reasonable charges for in-home health care services as determined by the service worker, who will determine reasonableness by:

*a.* The prevailing community standards for cost of care for similar services.

*b.* The availability of services at no cost to the IHHRC program.

[ARC 6720C, IAB 11/30/22, effective 2/1/23]

**441—177.11(249) Termination.** Termination of in-home health-related care shall occur under the following conditions:

**177.11(1) *Request.*** Upon the request of the client or legal representative.

**177.11(2) *Care unnecessary.*** When the client becomes sufficiently able to remain in the client’s own home with services that can be provided by other sources as determined by the service worker.

**177.11(3) *Additional care necessary.*** When the physical or mental condition of the client requires more care than can be provided in the client’s own home as determined by the service worker in consultation with the certifying physician.

**177.11(4) *Excessive costs.*** When the cost of care exceeds the maximum established in subrule 177.10(3).

**177.11(5) *Other services utilized.*** When the service worker determines that other services can be utilized to better meet the client’s needs.

**177.11(6) *Terms of provider agreement not met.*** When it has been determined by the service worker that the terms of the provider agreement have not been met by the client or the provider, the state supplementary assistance payment may be terminated.

**177.11(7) *Failing to comply with program requirements.*** When the recipient is not following the program requirements or cooperating with the program objectives including, but not limited to, a failure to provide information to program representatives.

[ARC 7549B, IAB 2/11/09, effective 4/1/09; ARC 5019C, IAB 4/8/20, effective 5/13/20; ARC 6720C, IAB 11/30/22, effective 2/1/23]

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## **RACING AND GAMING COMMISSION[491]**

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming

Division [195] under the “umbrella” of Commerce, Department of [181], 11/19/86]

[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]

[Transferred from Commerce Department[181] to the Department of Inspections and Appeals “umbrella”[481]  
pursuant to 1987 Iowa Acts, chapter 234, section 421]

[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

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CHAPTER 1  
ORGANIZATION AND OPERATION

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

**491—1.1(99D,99E,99F) Function.** The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act, sports wagering, and internet fantasy sports contests. Iowa Code chapters 99D, 99E and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings, gambling operations, sports wagering, and internet fantasy sports contests governed by Iowa Code chapters 99D, 99E and 99F.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—1.2(99D,99F) Organization, meetings, and procedure.**

**1.2(1) Organization.**

*a.* The racing and gaming commission is located at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

*b.* The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than four consecutive one-year full terms.

**1.2(2) Meetings.**

*a.* The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's website at [irgc.iowa.gov/](http://irgc.iowa.gov/) at least five days in advance of the meeting or will be sent to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting.

*b.* Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

*c.* Special or electronic meetings may be called by the chairperson only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

**1.2(3) Procedure.** All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

*a.* A quorum shall consist of three members.

*b.* When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

*c.* A commissioner, who is present at a meeting of the commission when action is taken, shall be presumed to have assented to the action unless the commissioner's dissent was requested to be entered in the minutes. A roll-call vote on any motion may be recorded in the minutes. Reconsideration of any action may only be initiated by a commissioner who voted with the prevailing side. The motion to reconsider any action may be made and seconded before the conclusion of the meeting when the action was approved, or it may be made in writing and submitted to the commission office within two business days following the meeting. Only the mover has the option to request that the motion be held in abeyance, when the motion to reconsider is offered during the same meeting. Any commissioner is eligible to call up the motion to reconsider at the next meeting of the commission. The official minutes shall record the offering of any motion to reconsider, whether placed during the meeting or by timely written submission.

*d.* The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

*e.* Cases not covered by this rule shall be governed by the most recent edition of Robert's Rules of Order Newly Revised.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1506C, IAB 6/25/14, effective 7/30/14; ARC 2927C, IAB 2/1/17, effective 3/8/17]

**491—1.3(99D,99F) Administration of the commission.** The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

**491—1.4(17A,22,99D,99F) Open records.** Except as provided in Iowa Code sections 17A.2(11) "f," 22.7, 99D.7(8), and 99F.4(6), all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made by mail, telephone, or fax or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's website. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

**491—1.5(17A,99D,99F) Forms.** All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

**1.5(1) Racing, gambling structure, or excursion gambling boat license application.** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee in the amount of \$25,000 to offset the commission's cost for processing the application. Additionally, the applicant shall remit an investigative fee of \$30,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

**1.5(2) Renewal application for racing license.** This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

**1.5(3) Renewal application for excursion gambling boat or gambling structure license.** This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. For a gambling structure, the annual license fee shall be based on the capacity of the gambling structure. The fee shall be \$5 per person capacity and accompany this application.

**1.5(4) Renewal application for racetrack enclosure license.** This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A \$1,000 application fee must accompany this license application.

**1.5(5) Occupational license application.** This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6 for additional information.)

**1.5(6) Season approvals.** This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

**1.5(7) Manufacturers and distributors license application.** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 for a distributor's license and a license fee of \$250 for a manufacturer's license shall accompany this application. (Refer to 491—Chapter 11 for additional information.)

**1.5(8) Advance deposit wagering license application.** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 shall accompany this application. (Refer to 491—Chapter 8 for additional information.)

**1.5(9) Asset/stock purchase form for commission approval.** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision.

**1.5(10) Sports wagering for excursion gambling boat, gambling structure or racetrack enclosure application.** This form shall contain, at a minimum, the full name of the applicant, disclosure of agreements involving sports wagering, a guarantee bond in an amount as determined by the commission, and a notarized certification of truthfulness. The applicant shall pay a nonrefundable application fee in the amount of \$45,000 to the commission.

**1.5(11) Renewal application for sports wagering for excursion gambling boat, gambling structure or racetrack enclosure.** This form shall contain, at a minimum, the full name of the applicant, a \$10,000 annual fee, disclosure of agreements involving sports wagering, sports wagering operations, internal controls, a guarantee bond in an amount as determined by the commission, a gambling treatment program, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

**1.5(12) Advance deposit sports wagering operator application.** This form shall contain, at a minimum, the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, agreement with licensed facility or description of proposed operation, a gambling treatment program, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

**1.5(13) Internet fantasy sports contest application.** This form shall contain, at a minimum, the full name of the applicant, board members, all ownership interests, balance sheets and profit-and-loss statements for the fiscal year immediately preceding the application, pending legal action, proof of satisfactory segregation of internet fantasy sports contest player contest funds as determined by the commission, a description of the proposed operation and a notarized certification of truthfulness. The

form may include other information the commission deems necessary to make a decision on the license application.

**1.5(14) *Alternative simulcast license application.*** This form shall contain, at a minimum, the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, agreement with licensed facility or description of proposed operation, and a notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application.

[ARC 1506C, IAB 6/25/14, effective 7/30/14; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6894C, IAB 2/22/23, effective 3/29/23]

**491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats.** Rescinded IAB 9/29/04, effective 11/3/04.

**491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates.** The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming or sports wagering in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

**1.7(1) *Compliance.*** The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

**1.7(2) *Gaming integrity.*** The commission will consider whether the proposed operation would ensure that gaming and sports wagering are conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. For the purposes of this chapter, the term “directors” shall also include managers of limited liability companies and the term “shareholders” shall also include members of limited liability companies.

**1.7(3) *Economic impact and development.*** The commission will consider:

*a.* The amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on the facility’s operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

*b.* The level of financial and other support the proposed operation will provide to the community in order to improve the quality of life of the residents of the community.

*c.* The viability and overall net benefit of the proposed operation to the state gaming industry, taking into consideration:

(1) Investment versus projected adjusted gross revenue.

(2) Impact on existing operators’ adjusted gross revenue versus existing operators’ ratio of adjusted gross revenue to investment.

(3) Ratio of equity to total investment and whether the proposed project is adequately and properly financed.

(4) Percent of projected adjusted gross revenue from underserved markets.

(5) Percent of projected adjusted gross revenue from existing Iowa operators.

(6) Stability and reliability of out-of-state market(s).

*d.* The benefits to Iowa tourism.

*e.* The number and quality of employment opportunities for Iowans.

- f.* The development and sale of Iowa products.
- g.* The number and types of developments and amenities associated with the proposed operation in addition to the gaming floor.

**1.7(4) *Efficient and safe operation.*** The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of the facility including providing adequate security for employees and patrons. Adequate employment to serve patrons' needs, facility scope and design, parking facilities, access to cashier windows, concessions, and restrooms will be considered.

**1.7(5) *Community support.*** The commission will consider support for the proposed project within the community in which a proposed facility is to be located.

**1.7(6) *Nurture of the racing industry.*** The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high-quality racing in Iowa. The commission will also consider if the proposed racetrack operation will maximize purses and is beneficial to Iowa breeders.

**1.7(7) *Other factors.*** The commission will consider such other factors as may arise in the circumstances presented by a particular application.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—1.8(17A,99D,99F) Granting of a waiver.** For purposes of this rule, a waiver means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity.

**1.8(1) *Scope of rule.*** This rule outlines generally applicable standards and a uniform process for the granting of a waiver from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

**1.8(2) *Applicability of rule.*** The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

**1.8(3) *Criteria for waiver.*** In response to a petition completed pursuant to subrule 1.8(5), the commission may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the commission finds, based on clear and convincing evidence, all of the following:

- a.* The application of the rule would impose an undue hardship on the entity for whom the waiver is requested;
- b.* The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any entity;
- c.* The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d.* Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

**1.8(4) *Filing of petition.*** A petition for a waiver must be submitted in writing to the commission as follows:

- a. License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.
- b. Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.
- c. Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the administrator.

**1.8(5) *Content of petition.*** A petition for waiver shall include the following information where applicable and known to the requester:

- a. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of any related contested case.
- b. A description and citation of the specific rule from which a waiver is requested.
- c. The specific waiver requested, including the precise scope and duration.
- d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 1.8(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
- e. A history of any prior contacts between the commission and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.
- f. Any information known to the requester regarding the commission's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.
- h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a waiver.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

**1.8(6) Additional information.** Prior to issuing an order granting or denying a waiver, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the administrator, a committee of the commission, or a quorum of the commission.

**1.8(7) Notice.** The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons.

To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the commission attesting that notice has been provided.

**1.8(8) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the commission so provides by rule or order or is required to do so by statute.

**1.8(9) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts, reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**1.8(10) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

**1.8(11) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant a waiver from a commission rule.

**1.8(12) Narrowly tailored exception.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**1.8(13) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**1.8(14) Conditions.** The commission may place any condition on a waiver that the commission finds desirable to protect the public health, safety, and welfare.

**1.8(15) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for the waiver continue to exist.

**1.8(16) Time for ruling.** The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**1.8(17) When deemed denied.** Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

**1.8(18) Service of order.** Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**1.8(19) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

**1.8(20) Submission of waiver information.** All orders granting or denying a waiver petition shall be submitted to the legislative services agency through the Internet site established pursuant to Iowa Code section 17A.9A for such submissions within 60 days of the granting or denial of the petition.

**1.8(21) Summary reports.** Rescinded IAB 2/22/23, effective 3/29/23.

**1.8(22) Cancellation of a waiver.** A waiver issued by the commission pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the commission issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
- b. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order.

**1.8(23) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**1.8(24) Defense.** After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**1.8(25) Judicial review.** Judicial review of the commission's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6894C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement Iowa Code section 17A.9A and Iowa Code chapters 99D and 99F.

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◊ Two or more ARCs

<sup>1</sup> Effective date of Item 1, subrule 1.6(4), delayed by the Administrative Rules Review Committee at its meeting held September 8, 1998, until the adjournment of the 1999 Session of the General Assembly.

<sup>2</sup> Effective date of 1.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000.

CHAPTER 4  
CONTESTED CASES AND OTHER PROCEEDINGS

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—4.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' actions.

**491—4.2(17A) Definitions.** Except where otherwise specifically defined by law:

*"Board of stewards"* means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

*"Commission"* means the racing and gaming commission.

*"Contested case"* means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

*"Gaming board"* means a board established by the administrator to review conduct by occupational, excursion gambling boat, gambling structure, sports wagering, fantasy sports contest and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

*"Gaming representative"* means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack, excursion gambling boat, or gambling structure to perform the supervisory and regulatory duties of the commission.

*"Issuance"* means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

*"Party"* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

*"Presiding officer"* means the administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

*"Proposed decision"* means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

*"Steward"* means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—4.3(17A) Time requirements.**

**4.3(1)** In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

**4.3(2)** All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

**4.3(3)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

## AND BOARD OF STEWARDS

**491—4.4(99D,99E,99F) Gaming representatives—licensing and regulatory duties.**

**4.4(1)** The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

*a.* Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

*b.* Rescinded IAB 2/5/03, effective 3/12/03.

*c.* Rescinded IAB 9/29/04, effective 11/3/04.

*d.* Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

**4.4(2)** The gaming representative or the administrator's designee shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, sports wagering, fantasy sports contest, gambling game, excursion gambling boat, and gambling structure licensees. A gaming representative or the administrator's designee may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative or the administrator's designee may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

*a.* A gaming representative shall make a referral to the gaming board in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

*b.* The gaming representative making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

**4.4(3)** A gaming representative or the administrator's designee shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the gaming representative or the administrator's designee determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D, 99E or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the gaming representative shall take one of the following courses of action:

*a.* If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the gaming representative shall reinstate the license.

*b.* If the licensee is convicted of the charges, the gaming representative shall deny the license.

*c.* If the licensee is convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license pursuant to 491—Chapter 6.

**4.4(4)** The gaming representative shall revoke the license of a person reported to the commission as having refused drug testing or as having a confirmed positive drug test result for a controlled substance, for a drug test conducted pursuant to Iowa Code section 730.5 or 99F.4(20).

**4.4(5)** A gaming representative may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

**4.4(6)** The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

**4.4(7)** The gaming representative shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

**4.4(8)** A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—4.5(99D,99E,99F) Gaming board—duties.** The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

**4.5(1)** The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

**4.5(2)** The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

**4.5(3)** The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

**4.5(4)** Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

**4.5(5)** The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

**4.5(6)** The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

**4.5(7)** It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

**4.5(8)** Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a licensed facility is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

**4.5(9)** The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference

to the conduct of gaming, and the authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

**4.5(10)** The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

**4.5(11)** Rescinded IAB 9/29/04, effective 11/3/04.

**4.5(12)** Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

**4.5(13)** Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

[ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

#### **491—4.6(99D,99F) Stewards—licensing and regulatory duties.**

**4.6(1)** The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

*a.* Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

*b.* Rescinded IAB 2/5/03, effective 3/12/03.

*c.* An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

*d.* Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

**4.6(2)** The stewards shall monitor, supervise, and regulate the activities of occupational and pari-mutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

**4.6(3)** A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the steward determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the stewards shall take one of the following courses of action:

*a.* If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the stewards shall reinstate the license.

*b.* If the licensee is convicted of the charges, the stewards shall deny the license.

*c.* If the licensee is convicted of a lesser charge, it is at the discretion of the stewards whether to reinstate or deny the license pursuant to 491—Chapter 6.

**4.6(4)** The stewards may summarily suspend an occupational license in accordance with rule 491—4.47(17A).

**4.6(5)** Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

*a.* Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

*b.* The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

*c.* The board has complete and total authority to decide the process of the hearing. The administrator may designate an employee to assist and advise the board of stewards through all aspects of the hearing process. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

*d.* It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

*e.* Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

*f.* The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

*g.* The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

*h.* Rescinded IAB 9/29/04, effective 11/3/04.

*i.* Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

**4.6(6)** A steward may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

**4.6(7)** The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

**4.6(8)** Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with the stewards. This stipulation must specifically outline the violation and the penalty

imposed. Stipulations must be approved by the board of stewards. Stipulations are considered final agency action and cannot be appealed.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—4.7(99D,99E,99F) Penalties (gaming board and board of stewards).** All penalties imposed will be promptly reported to the commission and facility or other licensed entity in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to five years from the date of the original suspension; place a license on probation; deny a license; impose a fine; or order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board of stewards may impose a fine of up to \$1,000, and the gaming board may impose a fine of up to \$3,000. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

**4.7(1)** Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours, at any commission office. Nonpayment or late payment of a fine may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

**4.7(2)** If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

**4.7(3)** If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

**4.7(4)** Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

**4.7(5)** When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

[ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 1456C, IAB 5/14/14, effective 6/18/14; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—4.8(99D,99E,99F) Effect of another jurisdiction's order.** The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

The commission and stewards shall have discretion to honor rulings from other jurisdictions regarding license suspension or revocation or the eligibility of contestants. Whenever the commission decides to honor an order from another jurisdiction, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended or revoked.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—4.9(99D,99E,99F) Service of administrative actions.** Any administrative action taken against an applicant or occupational licensee shall be served on the applicant or occupational licensee by personal service or by certified mail with return receipt requested to the last-known address on the application.

**4.9(1)** If the applicant or licensee is represented by legal counsel, a copy of the written decision shall also be provided to legal counsel by regular mail. However, the applicant or licensee must still be served in accordance with this rule.

**4.9(2)** If the administrative action involves an alleged medication violation that could result in disqualification of a contestant, the stewards shall provide by regular mail notice of the hearing and all subsequent rulings to the owner of the contestant.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—4.10(99D,99E,99F) Appeals of administrative actions.** A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the

gaming representative or the commission office in Des Moines. An appeal may also be filed by facsimile, electronic mail, or any other method as determined by the administrator. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. For any appeal of a decision rendered pursuant to 491—paragraph 10.4(4) “d”(3)“1,” the appeal must be received within 72 hours of any such decision and the standard of review will be abuse of discretion. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person’s representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; see Delay note at end of chapter; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—4.11 to 4.19** Reserved.

DIVISION II  
CONTESTED CASES

**491—4.20(17A) Requests for contested case proceedings not covered in Division I.** Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed and, if the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

**491—4.21(17A) Notice of hearing.**

**4.21(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

**4.21(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties’ counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

*i.* Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) “a” and rule 491—4.22(17A), that the presiding officer be an administrative law judge.

**491—4.22(17A) Presiding officer.** Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

**4.22(1)** Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission chair, members of the commission or commission employees.

**4.22(2)** The administrator may deny the request only upon a finding that one or more of the following apply:

*a.* Neither the administrator nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

*b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

*c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

*d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

*e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

*f.* The request was not timely filed.

*g.* The request is not consistent with a specified statute.

**4.22(3)** The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

**4.22(4)** An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctor degree unless waived by the agency.

**4.22(5)** Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**4.22(6)** Unless otherwise provided by law, the commission, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—4.23(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**491—4.24(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

**491—4.25(17A) Disqualification.**

**4.25(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

*a.* Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**4.25(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 4.25(3) and 4.39(9).

**4.25(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**4.25(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

#### **491—4.26(17A) Consolidation—severance.**

**4.26(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**4.26(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

#### **491—4.27(17A) Pleadings.**

**4.27(1)** Pleadings, other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

**4.27(2)** Petition.

*a.* Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

*b.* A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**4.27(3)** Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**4.27(4)** Amendment. Any notice of appeal, notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**491—4.28(17A) Service and filing of pleadings and other papers.**

**4.28(1)** *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**4.28(2)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**4.28(3)** *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

**4.28(4)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**4.28(5)** *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the

names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—4.29(17A) Discovery.**

**4.29(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**4.29(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**4.29(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

#### **491—4.30(17A) Subpoenas.**

##### **4.30(1) Issuance.**

*a.* A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

*b.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

**4.30(2)** *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

#### **491—4.31(17A) Motions.**

**4.31(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**4.31(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**4.31(3)** The presiding officer may schedule oral argument on any motion.

**4.31(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

**4.31(5)** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

**491—4.32(17A) Prehearing conference.**

**4.32(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the commission to all parties. For good cause the presiding officer may permit variances from this rule.

**4.32(2)** Each party shall bring to the prehearing conference:

*a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

*b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

*c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**4.32(3)** In addition to the requirements of subrule 4.32(2), the parties at a prehearing conference may:

*a.* Enter into stipulations of law or fact;

*b.* Enter into stipulations on the admissibility of exhibits;

*c.* Identify matters that the parties intend to request be officially noticed;

*d.* Enter into stipulations for waiver of any provision of law; and

*e.* Consider any additional matters that will expedite the hearing.

**4.32(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**491—4.33(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**4.33(1)** A written application for a continuance shall:

*a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

**4.33(2)** In determining whether to grant a continuance, the presiding officer may consider:

*a.* Prior continuances;

*b.* The interests of all parties;

*c.* The likelihood of informal settlement;

*d.* The existence of an emergency;

*e.* Any objection;

*f.* Any applicable time requirements;

*g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;

*h.* The timeliness of the request; and

*i.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**491—4.34(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**491—4.35(17A) Intervention.**

**4.35(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**4.35(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**4.35(3) Grounds for intervention.** The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**4.35(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**491—4.36(17A) Hearing procedures.**

**4.36(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**4.36(2)** All objections shall be timely made and stated on the record.

**4.36(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**4.36(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**4.36(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**4.36(6)** Witnesses may be sequestered during the hearing.

**4.36(7)** The presiding officer shall conduct the hearing in the following manner:

*a.* The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

*b.* The parties shall be given an opportunity to present opening statements;

*c.* Parties shall present their cases in the sequence determined by the presiding officer;

*d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

*e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**491—4.37(17A) Evidence.**

**4.37(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**4.37(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**4.37(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**4.37(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**4.37(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**4.37(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**491—4.38(17A) Default.**

**4.38(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**4.38(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**4.38(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 491—4.43(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**4.38(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**4.38(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**4.38(6)** “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**4.38(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 491—4.41(17A).

**4.38(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**4.38(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

**4.38(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 491—4.45(17A).

**491—4.39(17A) Ex parte communication.**

**4.39(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.25(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**4.39(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**4.39(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**4.39(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, email or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**4.39(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**4.39(6)** The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.25(1) or other law and they comply with subrule 4.39(1).

**4.39(7)** Communications with the presiding officer involving scheduling or procedural matters uncontested do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 491—4.33(17A).

**4.39(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written

responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**4.39(9)** Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**4.39(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**491—4.40(17A) Recording costs.** Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

**491—4.41(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**491—4.42(17A) Final decision.**

**4.42(1)** When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

**4.42(2)** When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

**4.42(3)** The commission has the authority to deny, suspend, or revoke any license applied for or issued by the commission or to fine a licensee or a holder of an occupational license.

**491—4.43(17A) Appeals and review.**

**4.43(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

**4.43(2)** *Review.* The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**4.43(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

**4.43(4) Requests to present additional evidence.** A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**4.43(5) Scheduling.** The commission shall issue a schedule for consideration of the appeal.

**4.43(6) Briefs and arguments.** Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

#### **491—4.44(17A) Applications for rehearing.**

**4.44(1) By whom filed.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**4.44(2) Content of application.** The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.43(4), the applicant requests an opportunity to submit additional evidence.

**4.44(3) Time of filing.** The application shall be filed with the commission within 20 days after issuance of the final decision.

**4.44(4) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

**4.44(5) Disposition.** Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

#### **491—4.45(17A) Stays of commission actions.**

**4.45(1) When available.**

a. Any party to a contested case proceeding may petition the commission for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the commission. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

**4.45(2) When granted.** In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5).

**4.45(3) Vacation.** A stay may be vacated by the issuing authority upon application by the commission or any other party. When a stay has been vacated, the commission or the commission's designee shall implement the original order or sanction which had been stayed. The commission or the commission's designee shall have full authority to determine how the original order or sanction is to be implemented.

**491—4.46(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties

may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**491—4.47(17A) Emergency adjudicative proceedings.**

**4.47(1) Necessary emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before the issuing of an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

**4.47(2) Issuance.**

a. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the commission;
- (3) Certified mail to the last address on file with the commission;
- (4) First-class mail to the last address on file with the commission; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**4.47(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**4.47(4) Completion of proceedings.** Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

**491—4.48(17A) Contested case hearings before the commission.** The commission may initiate a hearing upon its own motion, pursuant to any matter within its jurisdiction.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> June 19, 2013, effective date of 4.10 [Item 10 of ARC 0734C] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 2013.



CHAPTER 5  
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT  
LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]  
[Prior to 8/9/00, see also 491—Chs 20 and 25]

**491—5.1(99D,99F) In general.** For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license. This chapter applies to a license to race or operate a gaming facility unless otherwise noted.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—5.2(99D,99F) Annual reports.** Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13.

**5.2(1)** The audit of financial transactions and condition of licensee's operation shall include:

- a. An internal control letter;
- b. Documentation that the audit shall be conducted by certified public accountants authorized to practice in the state of Iowa under Iowa Code chapter 542;
- c. A balance sheet; and
- d. A profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies.

**5.2(2)** If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report.

**5.2(3)** In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

**5.2(4)** An engagement letter for the audit between the licensee and auditing firm shall be available upon request. The engagement letter requirement does not apply to the licensed qualified sponsoring organization. Conditions of engagement for the audit shall include, at a minimum, the following requirements:

a. The auditing firm shall report any material errors, irregularities or illegal acts that come to the firm's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct that apply to the auditing firm. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.

b. The auditing firm shall inform the commission in writing of matters that come to the firm's attention that represent significant deficiencies in the design or operation of the internal control structure.

c. The audit supervisor or an audit staff member conducting the audit must have experience or training in the gaming industry.

d. The auditing firm agrees to respond timely to all reasonable requests of successor auditors.

e. The auditing firm agrees, if requested by the commission, to provide licensee management and the commission with recommendations designed to help the licensee make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

**5.2(5)** For a licensed subsidiary of a parent company, an audit of the parent company may be filed with the following conditions:

*a.* The consolidated financial statements shall include in the supplemental schedule, or elsewhere as determined by the licensee and auditing firm, for each licensee: balance sheets, statements of operations, statements of cash flows, schedules of operating expenses and schedules of adjusted gross revenue and taxes and fees paid to governmental agencies.

*b.* Any internal audit staff assisting with the audit shall report any material errors, irregularities or illegal acts that come to the staff's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.

*c.* All other requirements in this rule are met and included for each entity licensed in Iowa unless an exception is granted in writing by the commission (or administrator).

**5.2(6)** The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to the state, city, and county; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

**5.2(7)** The annual audit report required by Iowa Code section 99F.13 shall include:

*a.* A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and county endowment fund; and regulatory fees.

*b.* A report on whether material weaknesses in internal accounting control exist.

**5.2(8)** Internal control records, compliance records, marketing expenses, and supplemental schedules included in the annual reports shall be kept confidential, as outlined in Iowa Code section 99F.12(4).

[ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—5.3(99D,99F) Information.** The licensee shall submit all information specifically requested by the commission or commission representative.

**491—5.4(99D,99F) Uniform requirements.**

**5.4(1)** *Maintenance of premises and facilities.* Each licensee shall at all times maintain its premises and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

**5.4(2)** *Facilities for commission.* Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

**5.4(3)** *Sanitary facilities for patrons.* Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's premises.

**5.4(4)** *First-aid room.*

*a.* During all hours of operation, each licensee shall equip and maintain adequate first-aid facilities and have, at a minimum, one employee trained in CPR, first aid, and the use of the automated external defibrillator (AED). During live racing at horse racetracks and while excursion gambling boats are cruising, the licensee shall have present either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician.

*b.* All individuals specified under paragraph 5.4(4) "a" must be currently licensed or certified, including active status, in accordance with the requirements of the Iowa department of public health.

c. Each licensee is required to have a properly functioning and readily accessible AED at the licensee's facility.

**5.4(5) Security force.**

a. *Peace officer.* Each licensee shall ensure that a person who is a certified peace officer is present as outlined in the facility's security plan approved by the commission. A certified peace officer pursuant to this rule must be employed by a law enforcement agency and have police powers.

b. *Employ adequate security.* Each licensee shall employ sufficient security to remove from the licensed premises a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice. Security shall also be provided in and about the premises to secure restricted areas including, but not limited to, the barn area, kennel area, paddock, and racing animal drug testing area.

c. *Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5) "b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification in a manner previously agreed upon by the representatives if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. *Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the premises or a part thereof of the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on constitutionally protected grounds such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, other than voluntary exclusions, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when the person is ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities, gambling structures, or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

**5.4(6) Firearms possession within licensed facility.**

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a licensed facility without the express written approval of the administrator unless:

(1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or

(2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that licensed facility.

b. Each licensee shall post in a conspicuous location at each entrance a sign that may be easily read stating, "Possession of any firearm within the licensed facility without the express written permission of the Iowa racing and gaming commission is prohibited".

**5.4(7) Video recording.** Licensees shall conduct continuous surveillance with the capability of video recording all on-site gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. "Gambling activities" means participating in any form of wagering as defined by Iowa Code chapter 99F and approved by the commission; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator's designee.

b. Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

c. A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

d. A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

**5.4(8) Commission approval of contracts and business arrangements.**

a. *Qualifying agreements.*

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to rule 491—11.13(99F) to obtain gambling games and implements of gambling, as defined by rule 491—11.1(99F), are exempt from submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity, a unit of government for the payment of taxes, or an entity that provides water, sewer, gas or electric utility services to the facility.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent or if the commission approval date of an ongoing contract is more than five years old.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. Where not already available, the contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person's access to receive cash or credit from such devices located on the licensed premises.

(2) A debt transaction greater than \$3 million entered into by a licensee or licensee's parent company assigning an obligation to a licensee, except a debt transaction previously approved in subrule 5.4(20), is subject to commission jurisdiction. The request for approval shall include:

1. The names and addresses of all parties;
2. The amount and source of funds;
3. The nature and amount of security and collateral provided;
4. The specific nature and purpose of the transaction; and
5. The term sheet or executive summary of the transaction.

(3) A qualifying agreement must be approved by the commission within 60 days of execution if made in Iowa pursuant to subparagraph 5.4(8) "b"(4) or within 30 days of execution if not made in Iowa. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval and the qualifying agreement is submitted to commission staff prior to implementation. Qualifying agreements need only be submitted on initiation, unless there is a material change in terms or noncompliance with subparagraph 5.4(8) "b"(4) or to comply with numbered paragraph 5.4(8) "a"(1)"3."

b. *Purpose of review.* The commission conducts reviews to serve the public interest to ensure that:

- (1) Gaming is free from criminal and corruptive elements.
- (2) Gaming-related funds are directed to the lawful recipient.
- (3) Gaming profits are not improperly distributed.
- (4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.
2. Goods are distributed through a distributor located in Iowa.
3. Goods are sold by a retailer/wholesaler located in Iowa.
4. Resources are produced or processed in Iowa.
5. Services are provided by a vendor whose headquarters/home office is in Iowa.

6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(5) if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

*c. Related parties.* Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

(1) Any corporate officer or member of a facility's board of directors.

(2) Any owner with more than a 5 percent interest in a facility.

(3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

*d. Review criteria.* The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

**5.4(9) Checks.** All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

**5.4(10) Taxes and fees.**

*a. Annual taxes and fees.* All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

*b. Submission of gambling game taxes and fees.*

(1) All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. Each day on the report shall be an accurate representation of the gaming activities. A week shall begin on Monday and end on Sunday.

(2) The reporting form must be received in the commission office by noon on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end.

*c. Calculation of promotional play receipts.* For the purpose of calculating the amount of taxes from promotional play receipts during a fiscal year, the commission will consider promotional play receipts as taxed in proportion to total adjusted gross receipts for each gaming day.

*d. Submission of sports wagering net receipts taxes.*

(1) A tax is imposed on the sports wagering net receipts received each fiscal year from sports wagering. "Sports wagering net receipts" means the gross receipts less winnings paid to wagerers on sports wagering on a cash accounting basis. Voided and canceled transactions are not considered receipts for the purpose of this calculation.

(2) All moneys collected for and owed to the state of Iowa under Iowa Code chapter 99F for the payment of sports wagering taxes shall be accounted for and itemized on a monthly basis, in a format approved by the commission, by noon on Wednesday following a gaming week's end in which the completed gaming week includes the last day of the month. All sports wagering taxes owed shall be received in the treasurer's office by 11 a.m. on the Thursday after accounting and itemization is due in the commission office. If sports wagering net receipts for a month are negative, a credit for sports wagering taxes may be given in the subsequent month.

(3) Licensees under Iowa Code section 99F.7 or 99F.7A are responsible for the payment of all sports wagering taxes.

(4) Controls which easily allow for the designation and recording of sports wagering net receipts to an individual licensee and the redemption of winnings to the respective licensee shall be established by the licensee and approved by the administrator.

**5.4(11) Rate of tax revenue.** Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

**5.4(12) Problem gambling.**

*a.* The holder of a license to operate gambling games and the holder of a license to accept simulcast wagering shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers;

(2) Comply with the process established by the commission to allow a person to be voluntarily excluded from the gaming floor of an excursion gambling boat, from the wagering area as defined in Iowa Code section 99D.2, from the sports wagering area as defined in Iowa Code section 99F.1(24), and from the gaming floor of all other licensed facilities or gambling activities regulated under Iowa Code chapters 99D and 99F;

(3) Allow persons to be voluntarily excluded for five years or life from all facilities on a form prescribed by the commission. Each facility will disseminate information regarding the exclusion to all other licensees and the commission; and

(4) Identify the availability of technology on a device that provides electronic or mechanical access to cash or credit for a patron of the facility that would allow for a person to voluntarily bar the person's access to receive cash or credit from such devices located on the licensed premises and provide the process for a person to do so. Methods of identification shall be prominently displayed and be indicative of the availability of the process prior to a transaction taking place.

*b.* The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated patrons on the gaming floor or wagering area;

(4) Steps for removing problem gamblers from the gaming floor or wagering area;

(5) Procedures for preventing reentry of problem gamblers;

(6) Procedures to prominently display problem gambling materials produced by the Iowa gambling treatment program throughout the facility with at least one display located in a high-traffic area of patrons; and

(7) Procedures for a licensee's website to include a link to the commission's website for individuals to self-exclude themselves pursuant to Iowa Code sections 99F.4(22) and 99D.7(23).

*c.* A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

*d.* Money forfeited by a voluntarily excluded person pursuant to Iowa Code sections 99D.7(23) and 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee under Iowa Code chapters 99D and 99F.

**5.4(13) Records regarding ownership.**

*a.* In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.
2. A copy of bylaws and amendments thereto.
3. A current list of officers and directors.
4. Minutes of all meetings of stockholders and directors.

5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.

6. A complete record of all transfers of stock.

7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.

8. A record, by stockholder, of all dividends distributed by the corporation.

9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.

2. A record of the withdrawals of partnership funds or assets.

3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.

4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.

2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.

3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

**5.4(14) Retention, storage, and destruction of books, records, and documents.**

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

(1) Prepared and maintained in a complete and accurate form.

(2) Retained at a site approved by the administrator until audited.

(3) Held immediately available for inspection by the commission during business hours of operations.

(4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, including information concerning a refusal to submit to drug testing and test results conducted pursuant to Iowa Code section 730.5.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

e. Any licensee that offers electronic wagering accounts, as defined by rule 491—12.1(99F), must prepare a disaster recovery plan that addresses off-site backups or equivalent. All disaster recovery plans

shall incorporate industry standards for retention and storage of wagering account information and shall be subject to review as part of the network security risk assessment required by subrule 5.4(21).

**5.4(15) *Remodeling.*** For any construction that changes the specific function of a public space of the facility, the licensee must first submit plans to and receive the approval of the administrator.

**5.4(16) *Officers, agents, and employees.*** Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed employees and other persons working on behalf of the licensee in public and nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

**5.4(17) *Designated gaming floor.*** The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

**5.4(18) *State fire and building codes.***

*a.* Barges, as defined in 5.6(1)“c,” and other land-based gaming facilities and such facilities that undergo major renovation shall comply with the state building code created by Iowa Code chapter 103A, if there is no local building code in force in the local jurisdiction in which the facility is located. A licensee shall submit construction documents and plans to the state building code commissioner and receive approval prior to construction, if a facility is subject to the state building code.

*b.* If there is no enforcement of fire safety requirements by a local fire department, a licensee shall also submit construction plans and documents to the state fire marshal and receive approval prior to construction. The fire marshal may cause a facility subject to this paragraph to be inspected for compliance with fire marshal rules prior to operation of the facility and shall notify the commission and the licensee of the results of any such inspection.

*c.* If a proposed new or renovated facility is subject to both paragraphs “a” and “b,” a single submission of construction plans and documents to the building code commissioner, with a cover letter stating that review and approval are required with respect to both the state building code and rules of the fire marshal, is sufficient to meet both requirements. Facilities subject to both paragraphs “a” and “b” shall have received approval from both the fire marshal and the building code commissioner prior to construction.

**5.4(19) *Gambling setoff.*** Each licensee shall adopt and implement policies and procedures designed to set off winnings of patrons who have a valid lien established under Iowa Code chapters 99D and 99F.

**5.4(20) *Shelf application for debt.***

*a.* The commission may grant approval of a shelf application for a period not to exceed three years.

*b.* Licensees whose parent company has issued publicly traded debt or publicly traded securities may apply to the commission for a shelf approval of debt transactions if the parent company has:

(1) A class of securities listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automatic Quotation System (NASDAQ) or has stockholders’ equity in the amount of \$15 million or more as reported in the parent company’s most recent report on Form 10-K or Form 10-Q filed with the Securities and Exchange Commission (SEC) immediately preceding application; and

(2) Filed all reports required by the SEC.

*c.* The application shall be in writing and shall contain:

(1) Proof of qualification to make the application in accordance with the criteria of this subrule.

(2) A statement of the amount of debt sought to be approved and the intended use of potential proceeds.

(3) Duration sought for the shelf approval.

(4) Financing rate sought during shelf approval.

- (5) Evidence of signature by authorized representative of the licensee under oath.
- (6) Other supplemental documentation requested by the commission or commission representative following the initial submission.

*d.* Once an application is approved by the commission:

(1) The licensee shall notify the commission representative of all debt transactions within ten days of consummation, including subsequent amendments and modifications of debt transactions, and provide executed copies of the documents evidencing the transactions as may be required.

(2) The commission representative may rescind a shelf approval without prior written notice. The rescission shall be in writing and set forth the reasons for the rescission and shall remain in effect until lifted by the commission upon the satisfaction of any such terms and conditions as required by the commission.

**5.4(21) Network security.**

*a.* The licensee shall biennially submit the results of an independent network security risk assessment to the administrator for review, subject to the following requirements:

(1) The testing organization must be independent of the licensee and shall be qualified by the administrator.

(2) The network security risk assessment shall be completed no later than March 31 in each year an assessment is required.

(3) Results from the network security risk assessment shall be submitted to the administrator no later than 60 days after the assessment is completed. Results shall include a remediation plan to address any risks identified during the risk assessment.

(4) The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

(5) The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

(6) For licensees issued a license to conduct sports wagering pursuant to Iowa Code section 99F.7A, a risk assessment required by this subrule shall include any on-premises sports wagering authorized by the commission at that licensee's place of business. A supplemental risk assessment for the sports wagering operations may be accepted in lieu of inclusion with the assessment of the licensee's overall operations, at the discretion of the administrator, and providing that the supplemental assessment independently complies with the requirements in subparagraphs 5.4(21) "a"(1) to (5).

*b.* At the discretion of the administrator, additional network security risk assessments may be required.

**5.4(22) Cashless wagering reserves.** A reserve in the form of cash or cash equivalents segregated from operational funds shall be maintained to cover the entirety of a licensee's electronic wagering account liability. The reserve shall equal or exceed the licensee's wagering account liability as of the last day in the previous quarter. An accounting of this reserve shall be made available for inspection to the commission upon request. The method of reserve shall be submitted to and approved by the administrator prior to implementation.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1456C, IAB 5/14/14, effective 6/18/14; ARC 1506C, IAB 6/25/14, effective 7/30/14; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 2795C, IAB 11/9/16, effective 12/14/16; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3446C, IAB 11/8/17, effective 12/13/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 4954C, IAB 2/26/20, effective 4/1/20; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6894C, IAB 2/22/23, effective 3/29/23; ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—5.5(99D) Pari-mutuel uniform requirements.**

**5.5(1) Insect and rodent control.** The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

**5.5(2) Results boards, totalizators required.** Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

**5.5(3) Photo finish camera.** A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

**5.5(4) Electric timing device.** Any electric timing device used by the licensee shall be approved by the commission.

**5.5(5) Official scale.** The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

**5.5(6) Lighting.** Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

**5.5(7) Fencing.** The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

**5.5(8) Guest passes.** The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

**5.5(9) Stewards.** There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

- a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.
- b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.
- c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

**5.5(10) Purse information.** Each licensee shall provide to the commission at the close of each racing meet the following purse information:

a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

**5.5(11) Designated wagering area.** The designated wagering area is an area of a racetrack, designated by a licensee and approved by the commission, in which a licensee may receive from a person wagers of money on a horse or dog in a race selected by the person making the wagers as designated by the commission. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Exceptions to this rule must be approved in writing by the commission.

**5.5(12) Mobile pari-mutuel wagering.** Pari-mutuel wagering shall be allowed outside the designated wagering area using mobile pari-mutuel tellers with portable wagering devices and by any other method approved in writing by the commission.

[ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4378C, IAB 3/27/19, effective 5/1/19]

**491—5.6(99F) Excursion gambling boat uniform requirements.**

**5.6(1) Excursion gambling boat.**

- a. *Capacity.* The minimum passenger capacity necessary for an excursion gambling boat is 250.
- b. *Excursion boat.* A self-propelled, floating “vessel” as defined by the U.S. Coast Guard may contain more than one vessel. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.
- c. *Moored barge.* “Barge” means any stationary structure approved by the commission, where the entire gaming floor is located on or near a body of water as defined under Iowa Code section 99F.7, subsection 1, and which facility is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations.

**5.6(2) Excursions.**

a. *Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion boat must operate at least one excursion during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat’s operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during business hours pursuant to Iowa Code section 99F.4(17).

b. *Dockside completion of excursions.* If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. *Notification.* If an excursion is not completed due to reasons specified in paragraph 5.6(2) “b,” a commission representative shall be notified as soon as is practical.

**5.6(3) Drug testing of boat operators.** Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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◊ Two or more ARCs

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CHAPTER 6  
OCCUPATIONAL AND VENDOR LICENSING

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—6.1(99D,99E,99F) Definitions.**

“*Applicant*” means an individual applying for an occupational license.

“*Beneficial interest*” means any and all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

“*Board*” means either the board of stewards or the gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

“*Commission*” means the Iowa racing and gaming commission.

“*Commission representative*” means a gaming representative, steward, or any person designated by the commission or commission administrator.

“*Conviction*” means the act or process of judicially finding someone guilty of a crime; the state of a person’s having been proved guilty; the judgment that a person is guilty of a crime or criminal offense, which includes a guilty plea entered in conjunction with a deferred judgment, and a juvenile who has been adjudicated delinquent. The date of conviction shall be the date the sentence and judgment is entered.

“*Deceptive practice*” means any deception or misrepresentation made by the person with the knowledge that the deception or misrepresentation could result in some benefit to the person or some other person.

“*Facility*” means an entity licensed by the commission to conduct pari-mutuel wagering, gaming or sports wagering operations in Iowa.

“*Internet fantasy sports contest service provider*” means a person, including a licensee under Iowa Code chapter 99D or 99F, who conducts an internet fantasy sports contest as authorized by Iowa Code chapter 99E.

“*Jockey*” means a person licensed to ride a horse in a race.

“*Kennel/stable name*” means any type of name other than the legal name or names used by an owner or lessee and registered with the commission.

“*Licensee*” means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license for a person to work in the pari-mutuel, gambling structure, excursion gambling boat, sports wagering or internet fantasy sports contest industry in Iowa.

“*Occupation*” means a license category listed on the commission’s occupational license application form.

“*Owner*” means a person or entity that holds any title, right or interest, whole or partial, in a racing animal.

“*Rules*” means the rules promulgated by the commission to regulate the racing and gaming industries, sports wagering, and internet fantasy sports contests.

“*Sports wagering*” means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. “Sports wagering” does not include placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is a participant, or placing a wager on the performance of athletes in an individual international sporting event governed by the international olympic committee in which any participant in the international sporting event is under 18 years of age.

“*Theft*” includes, but is not limited to:

1. The act of taking possession or control of either facility property or the property of another without the express authorization of the owner;
2. The use, disposition, or destruction of property in a manner which is inconsistent with or contrary to the owner’s rights in such property;
3. Misappropriation or misuse of property the person holds in trust for another; or

4. Any act which constitutes theft as defined by Iowa Code chapter 714. No specific intent requirement is imposed by rule 491—6.5(99D,99E,99F) nor is it required that there be any showing that the licensee received personal gain from any act of theft.

“Year” means a calendar year.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

#### **491—6.2(99D,99E,99F,252J) Occupational licensing.**

**6.2(1)** Licensee staff engaged in administration, control, conduct of gambling games, racing and sports wagering and fantasy sports contest board members, with the exception of certified law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. License applicants may be required to furnish to the commission a set of fingerprints and may be required to be refingerprinted or rephotographed periodically.

b. License applicants must supply current photo identification and proof of their social security number and date of birth.

c. License applicants must complete and sign the application form prescribed and published by the commission. An incomplete application shall not be processed. The application shall state the full name, social security number, residence, date of birth, and other personal identifying information of the applicant that the commission deems necessary. The application shall include, in part, whether the applicant has any of the following:

(1) A record of conviction of a felony or misdemeanor, including a record involving the entry of a deferred judgment and adjudications of delinquency;

(2) An addiction to alcohol or a controlled substance;

(3) A history of mental illness or repeated acts of violence;

(4) Military convictions;

(5) Adjudication of delinquency; or

(6) Overdue income taxes, fines, court-ordered legal obligations, or judgments.

d. License applicants for designated positions of higher responsibility may be required to complete a division of criminal investigation (DCI) background form.

e. A fee set by the commission shall be assessed to each license applicant. Once a license is issued, the fee cannot be refunded.

f. License applicants must pay an additional fee set by the Federal Bureau of Investigation (FBI) and by the department of public safety (DCI and bureau of identification) to cover the cost associated with the search and classification of fingerprints.

g. All racing and gaming commission fees for applications or license renewals must be paid by applicants or licensees before a license will be issued or renewed or, if the applicant is an employee of a facility, the commission fees will be directly billed to the facility.

h. An applicant who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

i. Participation in racing and gaming, sports wagering, and internet fantasy sports contests in the state of Iowa is a privilege and not a right. The burden of proving qualifications to be issued any license is on the applicant at all times. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, as well as any financial loss that may result from action with respect to an application.

j. All licenses are conditional until completion of a necessary background investigation including, but not limited to, fingerprint processing through the DCI and the FBI and review of records on file with national organizations, courts, law enforcement agencies, and the commission.

k. Any licensee who allows another person use of the licensee’s license badge for the purpose of transferring any of the benefits conferred by the license may be fined, have the license suspended or revoked, or be subject to any combination of the above-mentioned sanctions. No license shall be transferable.

*l.* It shall be the affirmative responsibility and continuing duty of each applicant to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission or commission representatives and to cooperate with commission representatives in the performance of their duties. A refusal by any person to comply with a request for information from a commission representative shall be a basis for fine, suspension, denial, revocation, or disqualification.

*m.* Non-U.S. citizens must supply documentation authorizing them to work in the United States.

*n.* Portions of all completed applications accepted by the commission are confidential. The following persons have the explicit right to review all information contained on the application: the applicant, all commission officials and employees, the track steward, and DCI agents or other law enforcement officers serving in their official capacity.

*o.* A license may not be issued or held by an applicant who is unqualified, by experience or otherwise, to perform the duties required.

*p.* A license may not be issued to applicants who have not previously been licensed in the following occupations except upon recommendation by the commission representative: trainers, assistant trainers, jockeys, apprentice jockeys, exercise persons, and other occupations the commission may designate. The commission representative may, for the purpose of determining a recommendation under this subrule, consult a representative of the facility, horsemen, or jockeys.

**6.2(2)** All facility board members and internet fantasy sports contest service provider board members shall undergo a background investigation and be licensed immediately upon appointment. For the purposes of this chapter, the term “board members” shall also include managers of limited liability companies.

**6.2(3)** Multiple license restrictions.

*a.* A person may work outside the licensed occupation as long as the person is licensed in an equal or higher occupation.

*b.* In horse racing only, the following restrictions apply:

(1) A person licensed as a jockey or veterinarian may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the commission representative.

**6.2(4)** Application endorsements. The responsibility of licensing an employee rests with the employer. Therefore, a license may not be issued to any employee unless the application includes prior endorsement of the facility’s authorized representative. All facilities must submit a list of representatives authorized to sign applications. This list shall not exceed six names. This authorization list shall be sent to the commission licensing office associated with each facility.

**6.2(5)** An applicant who has not held a license for the previous calendar year shall be considered a first-time applicant.

**6.2(6)** Interim identification badge.

*a.* All interim identification badges issued by a facility must be recorded in a logbook, which is available for inspection by commission or DCI representatives. The logbook must reflect the following information: date issued; user’s name and date of birth (verified by photo ID); occupation; badge number; issuer; time issued; and time returned. Badges shall only be issued on a daily basis and must be returned before the employee leaves facility premises. A badge shall be effective only until the commission licensing office’s next day of business, and may not be used to avoid obtaining a duplicate license.

*b.* A badge shall only be issued if:

(1) An employee is hired during a time that the commission licensing office is closed; or

(2) An employee is not in possession of the employee’s occupational license.

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**491—6.3(99D,99E,99F) Waiver of privilege.** An applicant may claim a privilege afforded by the Constitution of the United States or of the state of Iowa in refusing to answer questions of the

commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial.

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**491—6.4(99D,99E,99F) License acceptance.**

**6.4(1) Occupational license (license).** The license shall be displayed in a conspicuous manner on the licensee's clothing at all times while the licensee is on duty unless otherwise permitted by the commission representative. A licensee is prohibited from defacing, altering, or modifying a license.

**6.4(2) Knowledge of rules.** By acceptance of a license from the commission, the licensee agrees to follow and comply with the rules of the commission and Iowa statutes pertaining to racing and gaming, to report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations. Commission rules are available on the commission's website at [irgc.iowa.gov](http://irgc.iowa.gov).

**6.4(3) Search and seizure.** Acceptance of a license from the commission by any licensee is deemed consent to search and inspection by a commission or DCI representative and to the seizure of any prohibited medication, drugs, paraphernalia or devices.

**6.4(4) Misuse of license.** No person shall exercise or attempt to exercise any of the powers, privileges, or prerogatives of a license unless and until the appropriate licensing form has been executed and filed with the commission except under subrule 6.2(6). The commission shall exercise the power to regulate the conduct of all persons holding licenses or participating in racing or gaming.

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**491—6.5(99D,99E,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine.** The commission or commission representative shall deny an applicant a license or, if a license is already issued, a licensee shall be subject to probation, fine, suspension, revocation, or other disciplinary measures, if the applicant or licensee:

**6.5(1)** Does not qualify under the following screening policy:

*a.* Applicants must be at least 18 years of age to work in areas where gaming or wagering is conducted.

*b.* Applicants must be at least 16 years of age to be eligible to be licensed to work for a trainer of racing animals.

*c.* A license shall be denied if, within the last five years, an applicant has had:

(1) A felony conviction;

(2) A conviction for an offense involving theft or fraudulent practice in excess of \$500;

(3) A conviction for an offense involving the use of an alias in connection with fraud; or

(4) A conviction for an offense involving ownership, operation, or an interest in any bookmaking or other illegal enterprise or if the applicant is or has been connected with or associated with any illegal enterprise.

If the conviction occurred more than five years before application, a license shall not be issued unless the commission representative determines that sufficient evidence of rehabilitation exists.

*d.* Unless sufficient evidence of rehabilitation exists, a license shall be denied if any applicant has had:

(1) A conviction of a serious or aggravated misdemeanor or the equivalent; or

(2) Multiple convictions of simple misdemeanors.

*e.* A license shall be temporarily denied or suspended until the outcome of any pending charges is known if conviction would disqualify the applicant and the commission representative determines that the applicant poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D, 99E or 99F.

*f.* A license shall be denied if the applicant has an addiction to alcohol or a controlled substance without sufficient evidence of rehabilitation, has a history of mental illness without demonstrating successful treatment by a licensed medical physician or physician assistant, or has a history of repeated acts of violence without sufficient evidence of rehabilitation.

g. A license may be temporarily denied or a probationary license may be issued until outstanding, overdue court-ordered obligations are satisfied. These obligations include, but are not limited to, criminal or civil fines, state or federal taxes, or conditions imposed upon the applicant by a court of law that the applicant has failed to meet in a timely manner.

h. A license may be denied if an applicant is ineligible to participate in gaming in another state and it would not be in the best interest of racing or gaming to license the applicant in Iowa. A license shall be denied if an applicant is ineligible to participate in racing in another state whose regulatory agency is recognized by and reciprocates in the actions of this state.

i. A license shall be denied and not reinstated if an applicant has been denied patron privileges by order of the commission.

j. A license shall be denied if the applicant falsifies the application form and would be ineligible for licensure under one or more of the provisions set forth in paragraphs "a" through "i" above. In other cases of falsification, a license may be issued and the applicant shall be subject to a suspension, fine, or both.

k. A license shall be denied if an applicant is not of good repute or moral character. Any evidence concerning a licensee's current or past conduct, dealings, habits, or associations relevant to that individual's character or reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation or character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

l. A license shall be denied if the applicant is a board member of an internet fantasy sports contest service provider and is under the age of 21.

**6.5(2)** Has not demonstrated financial responsibility or has failed to meet any monetary obligation in the following circumstances connected with racing, gaming, sports wagering, or an internet fantasy sports contest:

a. *Issuance or passing of bad checks.* No person shall write, issue, make, or present any check in payment for any license fee, nomination fee, entry fee, starting fee, or purse payment when that person knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which it is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account.

b. *Judgments.* Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly, or in part, upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

c. *Timely payment.* Should an owner fail to make timely payment of any jockey fee, nomination fee, entry fee, starting fee, or any other reasonable charge normally payable to the facility, the facility shall notify the commission representatives who shall in turn give notice to the owner that a hearing will be held where the owner will be required to show cause why the license should not be suspended for failure to make the required payments.

**6.5(3)** Has been involved in any fraudulent or corrupt practices, including, but not limited to:

a. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person licensed by the commission to violate these rules or the laws of the state related to racing, gaming, sports wagering or internet fantasy sports contests.

b. Failing to report any bribe or solicitation as in 6.5(3) "a" above.

c. Soliciting by any licensee, except the facility, licensed advance deposit sports wagering operator or licensed internet fantasy sports contest service provider of bets by the public.

d. Violation of any law of the state or rule of the commission, or aiding or abetting any person in the violation of any such law or rule.

e. Theft or deceptive practice of any nature on the premises of a facility or in the performance of duties associated with advance deposit sports wagering or internet fantasy sports contests.

*f.* Giving under oath any false statement or refusing to testify, after proper notice, to the commission representative about any matter regulated by the commission, except in the exercise of a lawful legal privilege.

*g.* Failing to comply with any request for information or any order or ruling issued by the commission representative pertaining to a racing, gaming, sports wagering or internet fantasy sports contest matter.

*h.* Disorderly or offensive conduct; use of profane, abusive, or insulting language to, or interference with, commission representatives or racing or gaming officials while they are discharging their duties.

*i.* Conduct in Iowa or elsewhere that has been dishonest, undesirable, or detrimental to, or reflects negatively on, the integrity or best interests of racing, gaming, sports wagering or internet fantasy sports contests.

*j.* Illegal sale, possession, receipt, or use of a controlled substance or drug paraphernalia; intoxication; use of profanity; fighting; making threatening or intimidating statements; engaging in threatening or intimidating behavior; or any conduct of a disorderly nature on facility premises.

*k.* Discontinuance of or ineligibility for activity for which the license was issued.

*l.* Possessing a firearm on facility property without written permission from the commission representative.

*m.* Improperly influencing or attempting to improperly influence the results of a race, a gambling game, a sporting event that is subject to sports wagering, or an internet fantasy sports contest, singularly or in combination with any person.

*n.* Failing to report any attempt to improperly influence the result of a race, a gambling game, a sporting event that is subject to sports wagering, or an internet fantasy sports contest as in 6.5(3)“*m*” above.

*o.* Having had two rulings related to attempts to affect a race result or odds (rulings for electrical devices, serious positives, for example) in a lifetime or one ruling within the last three years. A license may be issued if one ruling has occurred outside of three years if sufficient evidence of rehabilitation exists. A license may be denied if a lengthy record of rulings from other jurisdictions exists.

*p.* Possessing any equipment for hypodermic injection, any substance for hypodermic administration, or any container designed to hold an injectable substance (narcotics, medications, drugs, or substances which could be used to alter the speed of racing animals) by anyone other than a veterinarian licensed by the commission. Notwithstanding the provisions of this subrule, any person may have possession of any chemical or biological substance for the person’s own treatment within a restricted area, provided that, if the chemical substance is prohibited from being dispensed without a prescription by any federal law or law of this state, the person is in possession of documentary evidence that a valid prescription has been issued to the person. Notwithstanding the provisions of this subrule, any person may have in possession within any restricted area any hypodermic syringe or needle for the purpose of self-administering to the person a chemical or biological substance, provided that the person has notified the commission representatives of the possession of the device, the size of the device, and the chemical substance to be administered and has obtained written permission for possession and use from the commission representative. A restricted area is a designated area for sample collection, paddock, racetrack, or any other area where officials carry out the duties of their positions.

*q.* Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, bedding, sanitation, and shelter; or by neglect or intentional act causing an animal to suffer unnecessary pain.

*r.* Offering or receiving money or other benefit for withdrawing a racing animal from a race.

*s.* Making a wager for a jockey by any person other than the owner or trainer of the horse ridden by the jockey.

*t.* Making a wager for a jockey on a horse by an owner or trainer other than that ridden by the jockey. This shall not be construed to include bets on another horse in combination with the horse ridden by the jockey in multiple wagering bets.

- u. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.
  - v. Entering or starting a racing animal known or believed to be ineligible or disqualified.
  - w. Possessing any device designed to increase or decrease the speed of a racing animal during a race other than an ordinary riding whip without written permission from the commission representative.
  - x. Communicating with or contacting a person who is voluntarily excluded pursuant to Iowa Code chapter 99D or 99F for gaming-, wagering-, or internet fantasy sports contest-related activities.
- [ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6894C, IAB 2/22/23, effective 3/29/23]

**491—6.6(99D,99E,99F) Applications for license after denial, revocation, or suspension.**

**6.6(1)** Any person whose license was denied or revoked may reapply for a license in accordance with the commission's rules governing applications. However, the applicant must satisfy the following conditions:

- a. The applicant shall bear the burden of proof of establishing satisfaction with all license criteria and shall provide proof of satisfaction of any terms or conditions imposed as a part of the commission's order denying or revoking the license;
- b. The applicant shall allege facts and circumstances establishing, to the commission's satisfaction, sufficient evidence of rehabilitation and that the basis for the denial or revocation no longer exists;
- c. The applicant shall establish that the public interest and the integrity of racing and gaming would not be adversely affected if a license is granted; and
- d. If the license was revoked, a new application shall not be filed until five years have elapsed from the date of the order of revocation.

**6.6(2)** Any person whose license was suspended for 365 days or more may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set forth in 6.6(1) "a," "b," and "c" above. If a person's license has not expired after the 365-day suspension, the person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1) "a," "b," and "c" above prior to that individual's participating in racing or gaming.

[ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—6.7(99D,99E,99F) Probationary period placed on a license.** The commission representative or the board may place a probationary period on a license. The terms of the probationary period shall include the effective dates, conditions placed on the licensee and any penalty for failure to follow those conditions, including fine, suspension, denial, or revocation.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—6.8(99D,99E,99F) Duration of license.** A license issued by the commission is valid for three calendar years. The license shall expire at the end of the third calendar year, unless an extension is granted by the administrator.

[ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—6.9(99D,99E,99F) Licensed employees moving from one location to another.**

**6.9(1)** Once an applicant obtains an occupational license from the commission and is in good standing, the applicant is eligible to work at any of the facilities in the state of Iowa.

**6.9(2)** When a facility hires a person who is already in possession of a current occupational license, a list of the person(s) hired must be filed weekly with the local commission office before the person(s) begins working. The list should contain the license number, name, social security number, and birth date of each person hired.

[ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—6.10(99D,99E,99F) Required report of discharge of licensed employee.** Upon discharge of any licensed employee by any licensed employer for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing, within 72 hours, to the local commission

office, including the name and occupation of the discharged licensee. In the case of discharge of a board member of an internet fantasy sports contest service provider, the employer must report that fact in writing, within 72 hours, to the Des Moines commission office, including the name and occupation of the discharged licensee.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—6.11(99D,99F,252J) Receipt of certificate of noncompliance from the child support recovery unit.**

**6.11(1)** Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

**6.11(2)** The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

**6.11(3)** The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

**6.11(4)** Upon receipt of a withdrawal of a certificate of noncompliance from the child support recovery unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

**6.11(5)** All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

**491—6.12(99D,99F,261) Receipt of a certificate of noncompliance from the college student aid commission.** Rescinded ARC 5075C, IAB 7/1/20, effective 8/5/20.

**491—6.13(99D,99F,272D) Receipt of certificate of noncompliance from the centralized collection unit of the department of revenue.**

**6.13(1)** Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

**6.13(2)** The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

**6.13(3)** The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

**6.13(4)** Upon receipt of a withdrawal of a certificate of noncompliance from the centralized collection unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

**6.13(5)** All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.14(99D,99F) Vendor's license.**

**6.14(1)** A vendor's license is required of any entity not licensed as a manufacturer or distributor that conducts operations on site at a facility or a vendor that provides geolocation security services to any licensee.

**6.14(2)** An applicant for a vendor's license must complete the appropriate commission form. An authorized representative from the facility for which the vendor wishes to do continuous business must sign the form. A letter from the facility authorizing the vendor to do business shall replace a signature on the application form.

**6.14(3)** Only employees who work for a racing, sports wagering, or simulcast vendor require an occupational license. A vendor license must be issued before a vendor employee can be issued a license to represent that company. The authorized signature on the vendor employee's application must be the signature of the person authorized by the vendor application to sign vendor employee applications.

**6.14(4)** Rescinded IAB 9/29/04, effective 11/3/04.

[ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6894C, IAB 2/22/23, effective 3/29/23]

**491—6.15(99D,99F) Applicability of rules—exceptions.** Rules pertaining to and rulings against licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in racing or gaming by the affected person circumvents the intent of the rule or affects the ruling by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or a person ineligible to participate in a particular activity.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.16(99D) Disclosure of ownership of racing animals.** All entities of ownership (individual, lessee, lessor, general partnership, or corporation) and all trainers are responsible for making full and accurate disclosure of the ownership of all racing animals registered or entered for racing. Disclosure shall identify in writing all individuals or entities that, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in a racing animal, and those individuals or entities who by virtue of any form of interest might exercise control over the racing animal or may benefit from the racing of the animal. The degree and type of ownership held by each individual person shall be designated. The transfer of a racing animal to avoid application of a commission rule or ruling is prohibited and constitutes grounds for discipline.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.17(99D) Owners of racing animals.**

**6.17(1)** Each greyhound owner must obtain an owner's license from the commission to enter an animal in an official schooling race or a purse race at an Iowa racetrack.

**6.17(2)** Each owner is subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by a facility or upon making entry to run on its track. Owners shall accept the decision of the commission representative on any and all questions, subject to the owner's right of appeal to the commission.

**6.17(3)** An owner who is under the age of 18 must have a parent or guardian cosign any contractual agreements.

**6.17(4)** No person or entity that is not the owner of record of a properly registered racing animal that is in the care of a licensed trainer may be licensed as an owner.

**6.17(5)** Temporary horse owner license. Rescinded IAB 11/5/08, effective 12/10/08.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.18(99D) Kennel/stable name.**

**6.18(1)** Licensed owners and lessees wishing to race under a kennel/stable name may do so by applying for a license with the commission on forms furnished by the commission. All kennel/stable

names must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

**6.18(2)** A kennel/stable name license is only necessary if the kennel/stable name is a name other than the licensed owner's legal name (first and last name), the owner's full name followed by the word "kennel" or "stable," or a licensed partnership or corporation.

**6.18(3)** In applying to race under a kennel/stable name, the applicant must disclose the identities behind the name and, if applicable, comply with partnership and corporation rules. The application form must appoint one person to act as the agent for the kennel/stable name.

**6.18(4)** Changes in identities involved in a kennel/stable name must be reported immediately to and approved by the commission representative.

**6.18(5)** A licensed owner who has registered under a kennel/stable name may at any time cancel the kennel/stable name after giving written notice to the commission.

**6.18(6)** A kennel/stable name may be changed by registering a new name.

**6.18(7)** A licensed owner may not register a kennel/stable name that the commission determines to be either misleading to the public or unbecoming to the sport.

**6.18(8)** Neither sole owners nor partners, after adopting use of a kennel/stable name, may use their real names to reflect ownership that is reflected in the kennel/stable name.

**6.18(9)** A fee set by the commission shall be assessed for each application for a kennel/stable name license.

**6.18(10)** No person may register with any racing authority a stable name which has already been registered by another person, or which is the real name of another owner of race horses, or which is the real or stable name of any prominent person who does not own race horses, or which is not plainly distinguishable from that of another registered stable name.

**6.18(11)** Contract kennels must be licensed with the commission, on forms furnished by the commission, in the name of the kennel booking contract entered into between the contract kennel and the facility; this name shall be listed in the official program as "kennel."

**6.18(12)** A licensed kennel owner shall not be a party to more than one kennel name at the same facility.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

#### **491—6.19(99D) Leases (horse racing only).**

**6.19(1)** No licensee shall lease a racing animal for the purpose of racing at facilities in this state without prior approval of the commission representatives.

**6.19(2)** Both lessor and lessee must be licensed as owners.

**6.19(3)** Each licensee who leases a racing animal must submit a copy of that lease to the commission representatives. The lease must contain the conditions of the lease arrangement and the names of all parties and racing animals related to the lease. Failure to submit accurate and complete information under this rule is a violation of these rules.

**6.19(4)** Both seller and purchaser, or their agents or representatives, of a racing animal that is sold after being registered for racing with a racing association shall immediately notify the commission representatives of the sale and transfer. The commission representatives may require a declaration of the facts of the sale and transfer under oath and penalty of perjury.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

#### **491—6.20(99D) Partnerships owning racing animals.**

**6.20(1)** A partnership is defined as a formal or informal arrangement between two or more persons to own a racing animal. All partnerships, excluding spouses, must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

**6.20(2)** The managing partner(s) listed on the application and all parties owning 5 percent or more must be licensed as individual owners.

*a.* The commission representative may request a partnership to have on file with the commission an agreement whereby the managing partner(s) is designated to be responsible for each racing animal.

This agreement must be notarized and must be signed by all partners. A copy of this agreement must be attached to the registration certificate on file in the racing secretary's office.

*b.* It will be the responsibility of the managing partner(s) to make sure that all parties are eligible for licensure. The commission representative shall deny, suspend, or revoke the license of any partnership in which a member (either qualified or limited by rights or interests held, or controlled by any individual or entity) would be ineligible to be licensed as an owner or to participate in racing.

*c.* Any owner who is a member of a partnership may be required to list all racing animals that the owner intends to race in Iowa in which an interest is owned (either in whole or in part).

*d.* All parties to a partnership shall be jointly and severally liable for all stakes, forfeits, and other obligations.

*e.* An authorized agent may be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, entries, scratches, signing of claim slips, and other obligations in lieu of the managing partner(s).

**6.20(3)** A partnership name under which a racing animal races shall be considered a kennel/stable name for purposes of these rules. It will not be necessary for the partnership to obtain a kennel/stable name license.

**6.20(4)** Any partner's share or partial share of a partnership that owns a racing animal shall not be assigned without the written consent of the other partner(s), the commission representative's approval, and filing with the racing secretary. Any alteration in a partnership structure or percentages must be reported promptly in writing, notarized, signed by all members of the partnership, and filed with the commission.

**6.20(5)** The commission representative may review the ownership of each racing animal entered to race and shall ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owner(s). The commission representative may determine the validity for racing purposes of all liens, transfers and agreements pertaining to ownership of a racing animal and may call for adequate evidence of ownership at any time. The commission representative may declare any animal ineligible to race if its ownership, or control of its ownership, is in question.

**6.20(6)** A fee set by the commission shall be assessed for each application for a partnership license. [ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 2927C, IAB 2/1/17, effective 3/8/17]

#### **491—6.21(99D) Corporations owning racing animals.**

**6.21(1)** All corporations must be duly licensed by the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D). In addition, any stockholder owning a beneficial interest of 5 percent or more of the corporation must be licensed as an owner. The corporation must submit a complete list of stockholders owning a beneficial interest of 5 percent or more.

**6.21(2)** The corporation stockholders owning less than 5 percent of the stock of a corporation need not be licensed; however, the commission may request a list of these stockholders. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. These stockholders shall not have access to the backstretch, to the paddock area, or to the winner's circle other than as guests of a facility, commission representatives, or designated licensees and may be required to submit additional information as requested by the commission representative, which may include a release for confidential information and submission of fingerprint cards; and the commission may assess costs, as required, for criminal history checks. This information shall be supplied to the commission representative within 30 days of the date of the request.

**6.21(3)** Any and all changes in either the corporation structure or the respective interest of stockholders as described above must be notarized and promptly filed with the commission representatives.

**6.21(4)** The corporate name under which the corporation does business in Iowa shall be considered a kennel/stable name for purposes of these rules. It shall not be necessary for the corporation to obtain a kennel/stable name license.

**6.21(5)** A corporation, in lieu of an executive officer, may appoint a racing manager or an authorized agent for the purposes of entry, scratches and the signing of claim slips, among other obligations.

**6.21(6)** The commission representative may deny, suspend, or revoke the license of a corporation for which a beneficial interest includes or involves any person or entity that is ineligible (through character, moral fitness or any other criteria employed by the commission) to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.

**6.21(7)** Any stockholder holding a beneficial interest of 5 percent or more of a corporation must, in addition to being licensed, list any interest owned in all racing animals in which any beneficial interest is owned.

**6.21(8)** The corporation must pay a prescribed fee to the commission.  
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.22(99D) Authorized agents for owner entities of racing animals.**

**6.22(1)** Any persons represented by a kennel name, stable name, corporation, partnership, or single person entity may assign an agent for the kennel name, stable name, corporation, partnership, or single person entity. The assigned agent is then authorized to handle matters pertaining to racing, which may include authorization to collect all purses or other moneys.

**6.22(2)** The application for a license as an authorized agent must be signed by the principal and clearly set forth the powers of the agent, including whether the agent is empowered to collect money from the facility. The application must be notarized and a copy must be filed with the facility.

**6.22(3)** Changes in an agent's powers or revocation of an agent's authority must be in writing, notarized, and filed with the commission's licensing office and the facility.

**6.22(4)** The authorized agent must pay a prescribed fee to the commission.  
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.23(99D) Trainers and assistant trainers of racing animals.**

**6.23(1)** All trainers and assistant trainers of racing animals and their employees are subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by the facility or upon making entry to run on its track. Trainers, assistant trainers, and their employees shall accept the decision of the commission representative on any and all questions, subject to their right of appeal to the commission.

**6.23(2)** Licensing of trainers and assistant trainers. Eligibility:

*a.* An applicant must be at least 18 years of age to be licensed by the commission as a trainer or assistant trainer.

*b.* An applicant must be qualified, as determined by the commission representative, by reason of experience, background, and knowledge of racing. A trainer's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require, and, if an applicant has previously never been licensed as a trainer or assistant trainer, shall require, four or more of the following:

(1) Passing a written examination.

(2) Passing an interview or oral examination.

(3) Passing a demonstration of practical skills in a "barn test" (horse racing only).

(4) A minimum of two written statements from licensed trainers during the concurrent race meet attesting to the applicant's character and qualifications.

(5) Proof the applicant has held a racing participant license of another type for a minimum of two years prior to application.

*c.* An applicant must have a racing animal eligible to race and registered to race at the current race meeting.

[ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 6169C, IAB 2/9/22, effective 3/16/22]

**491—6.24(99D) Jockeys and apprentice jockeys.**

**6.24(1)** *Eligibility.*

a. An applicant for a jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have the written consent of a parent or guardian.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician or physician assistant affirming fitness to participate as a jockey. The commission representatives may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability, or temporary participation in races. An applicant may participate in a race or races, with the commission representative's prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

**6.24(2) Apprentice jockeys.**

a. The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performance in quarter horse racing does not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An applicant for an apprentice jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have written consent of parent or guardian. Before such license is granted, the gaming representative shall ascertain that the applicant has suitable qualifications and aptitude to hold an apprentice jockey's license and that the applicant has not been previously licensed as a jockey under any jurisdiction.

d. Rescinded IAB 1/30/08, effective 3/5/08.

**6.24(3) Jockeys from foreign countries.** Upon making application for a license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their countries, not under suspension, and bound by the rules and laws of this state. To facilitate this process, the jockey shall present a declaration sheet to the commission representative in a language recognized in this jurisdiction. [ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 6894C, IAB 2/22/23, effective 3/29/23]

**491—6.25(99D) Jockey agent.**

**6.25(1)** An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission; and

b. Be qualified, as determined by the commission representative, by reason of experience, background, and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

- (1) A written examination.
- (2) An interview or oral examination.

c. An applicant not previously licensed as a jockey agent shall be required to pass a written and oral examination.

**6.25(2)** A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.26(99D) Driver.** In determining eligibility for a driver's license, the board shall consider:

1. Whether the applicant has obtained the required U.S.T.A. license.
2. Evidence of driving experience and ability to drive in a race.
3. The age of the applicant. No person under 18 years of age shall be licensed by the commission as a driver. However, a person under 18 years of age, but at least 16 years of age who has the written consent of a parent or guardian, may be licensed to drive in qualifying races only.
4. Evidence of physical and mental ability.
5. Results of a written examination to determine qualifications to drive and knowledge of commission rules.

6. Record of rule violations.  
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.27(99D) Practicing veterinarians.** Every veterinarian practicing on facility premises must have an unrestricted and current license to practice veterinary science issued by the state of Iowa veterinary regulatory authority and shall be licensed by the commission in accordance with the commission rules governing occupational licensing.

**6.27(1)** Every veterinarian seeking to be licensed by the commission shall submit verification of a current and unrestricted license to practice veterinary science issued by the state of Iowa veterinary regulatory authority.

**6.27(2)** A veterinarian seeking to be licensed by the commission shall disclose in the veterinarian's application to the commission all disciplinary action taken against any licenses to practice veterinary science held by the applicant.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

**491—6.28(99D,99F) Alcohol and drug testing.**

**6.28(1) *Alcohol prohibition/preliminary breath test.*** Licensees whose duties require them to be in a restricted area of a racing facility shall not have present within their systems an amount of alcohol of 0.05 percent or more. A restricted area is a designated area for sample collection, paddock, racetrack, or other area where racing officials carry out the duties of their positions.

Acting with reasonable cause, a commission representative may direct the above licensees to submit to a preliminary breath test. A licensee shall, when so directed, submit to examination.

If the results show a reading of 0.05 percent alcohol content or more, the licensee shall not be permitted to continue duties for that day. For a second violation, the licensee shall not be permitted to continue duties for that day and then shall be subject to fine or suspension by the board or commission representative. For a subsequent violation, the licensee may be subject to procedures following positive chemical analysis (see 6.28(3)).

If the results show a reading of 0.10 percent alcohol content or more, the licensee is subject to fine or suspension by the board or commission representative. For a subsequent violation, the licensee may be subject to procedures following positive chemical analysis (see 6.28(3)).

**6.28(2) *Drug prohibition/body fluid test.*** Licensees whose duties require them to be in a restricted area, as defined in subrule 6.28(1), of a racing facility shall not have present within their systems any controlled substance as listed in Schedules I to V of U.S.C. Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician or physician assistant who is acting in the course of professional practice. Acting with reasonable cause, a commission representative may direct the above licensees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases, the commission representative may prohibit the licensee from participating in racing until the licensee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee who refuses to provide the samples herein described shall be in violation of these rules and shall be immediately suspended and subject to disciplinary action by the board or commission representative. All confirmed positive test costs and any related expenses shall be paid for by the licensee. Negative tests shall be at the expense of the commission.

With reasonable cause noted, an on-duty commission representative may direct a licensee to deliver a test. The commission representative shall call the approved laboratory or hospital and provide information regarding the person who will be coming; that the licensee will have a photo ID; the name and number to call when the licensee arrives; to whom and where to mail the results; and who should be called with the results. The licensee will be directed to immediately leave the work area and proceed to an approved laboratory or hospital for testing with the following directions:

1. If under impairment, the licensee must have another person drive the licensee to the laboratory or hospital.

2. On arrival at the laboratory or hospital, the licensee must show the license to the admitting personnel for verification.

3. On arrival at the laboratory or hospital, the licensee shall be required to sign a consent for the release of information of the results to a commission representative.

**6.28(3) Procedures following positive chemical analysis.**

a. After professional evaluation, if the licensee's condition proves nonaddictive and not detrimental to the best interest of racing, and the licensee can produce a negative test result and agrees to further testing at the discretion of the commission representative to ensure unimpairment, the licensee may be allowed to participate in racing.

b. After professional evaluation, should the licensee's condition prove addictive or detrimental to the best interest of racing, the licensee shall not be allowed to participate in racing until the licensee can produce a negative test result and show documented proof of successful completion of a certified alcohol/drug rehabilitation program approved by the commission. The licensee must also agree to further testing at the discretion of the commission representative to ensure unimpairment.

c. For a second violation, a licensee shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the administrator and to apply for reinstatement only at the discretion of the administrator.

[ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 6894C, IAB 2/22/23, effective 3/29/23]

**491—6.29(99D) Time by which owner, jockey and trainer must be licensed.** The owner (includes stable names, partnerships, and corporations), the jockey and the trainer of a horse entered to race must be licensed by the first post time of the race card for the day in which the horse is entered.

[ARC 7658B, IAB 3/25/09, effective 3/23/09; ARC 2468C, IAB 3/30/16, effective 5/4/16]

These rules are intended to implement Iowa Code chapters 99D and 99F.

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CHAPTER 8  
PARI-MUTUEL WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—8.1(99D) Definitions.**

“*Account*” means an account approved by the commission for pari-mutuel advance deposit wagering with a complete record of credits, wagers and debits established by a licensee account holder and managed by a licensee or ADWO.

“*Administrator*” means the administrator of the Iowa racing and gaming commission or the administrator’s designee.

“*Advance deposit wagering*” means a method of pari-mutuel wagering in which an individual may establish an account, deposit money into the account, and use the account balance to pay for pari-mutuel wagering.

“*Advance deposit wagering center*” means an actual location, the equipment, and the staff of a licensee, ADWO, or both involved in the management, servicing and operation of the pari-mutuel advance deposit wagering for the licensee.

“*Advance deposit wagering operator*” or “*ADWO*” means an advance deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk County and the Iowa Horsemen’s Benevolent and Protective Association to provide pari-mutuel advance deposit wagering.

“*Alternative simulcast operator*” or “*ASO*” means an entity licensed by the commission to provide a system of pari-mutuel wagering at off-track betting venues at facilities licensed by the commission to conduct gambling games in Iowa.

“*Authorized receiver*” means a receiver that conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host facilities.

“*Betting interest*” means a number assigned to a single runner, an entry or a field for wagering purposes.

“*Board of stewards*” means a board established by the administrator to review conduct by pari-mutuel facilities and their employees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

“*Breakage*” means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents. “*Breakage*” is the net pool minus payoff.

“*Commission*” means the Iowa racing and gaming commission.

“*Commission representative*” means an employee of the commission designated to represent the commission in matters pertaining to the operation of the mutuel department. In the absence of a specifically appointed representative, a commission steward will perform the functions and duties of the commission representative.

“*Contest*” means a race on which wagers are placed.

“*Credits*” means all positive inflows of money to an account.

“*Dead heat*” means that two or more runners have tied at the finish line for the same position in the order of finish.

“*Debits*” means all negative outflow of money from an account.

“*Deposit*” means a payment of money into an account.

“*Double*” means a wager to select the winners of two consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility and shall not be construed as a “quinella double.”

“*Entry*” means two or more runners are coupled in a contest because of common ties and a wager on one of them shall be a wager on all of them.

“*Exacta*” (may also be known as “perfecta” or “correcta”) means a wager selecting the exact order of finish for first and second in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Facility*” means an entity licensed by the commission to conduct pari-mutuel wagering in Iowa.

“*Field*” means when the individual runners competing in a contest exceed the numbering capacity of the totalizator and all runners of the higher number shall be grouped together. A wager on one in the field shall be a wager on all. (No “fields” shall be allowed in greyhound racing.)

“*Guest facility*” means a facility which offers licensed pari-mutuel wagering on contests conducted by another facility (the host) in either the same state or another jurisdiction.

“*Host facility*” means the facility conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

“*Interstate simulcasting*” means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering. For the purposes of this definition, “interstate” also includes foreign jurisdictions.

“*Intrastate simulcasting*” means the telecast of live audio and visual signals of pari-mutuel racing conducted on a licensed pari-mutuel track within Iowa sent to or received from an authorized pari-mutuel facility within Iowa for the purpose of pari-mutuel wagering.

“*Licensee*” means a horse racetrack located in Polk County operating under a license issued by the commission.

“*Licensee account holder*” means any individual at least 21 years of age who successfully completed an application and for whom the licensee or ADWO has opened an account. “Licensee account holder” does not include any corporation, partnership, limited liability company, trust, estate or other formal or nonformal entity.

“*Minus pool*” means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than \$1.05 for each \$1.00 wagered.

“*Mutuel department*” means that area of a racetrack where wagers are made and winning tickets are cashed and where the totalizator is installed and any area used directly in the operation of pari-mutuel wagering.

“*Mutuel manager*” means an employee of the facility who manages the mutuel department.

“*Net pool*” means the amount remaining in each separate pari-mutuel pool after the takeout percentage, as provided for by Iowa Code section 99D.11, has been deducted.

“*Odds*” means the approximate payoffs per dollar based on win pool wagering only on each betting interest for finishing first without a dead heat with another betting interest.

“*Official*” means that the order of finish for the race is “official” and that payoff prices based upon the “official” order of finish shall be posted.

“*Order of finish*” means the finishing order of each runner from first place to last place in each race. For horse racing only, the order of finish may be changed by the stewards for a rule infraction prior to posting of the official order of finish.

“*Pari-mutuel pool*” means the total amount of money wagered on each separate pari-mutuel pool for payoff purposes.

“*Payoff*” means the amount distributed to holders of valid winning pari-mutuel tickets in each pool as determined by the official order of finish and includes the amount wagered and profit.

“*Place*” means a runner finishing second.

“*Place pool*” means the total amount of money wagered on all betting interests in each race to finish first or second.

“*Post time*” means the scheduled starting time for a contest.

“*Proper identification*” means a form of identification accepted in the normal course of business to establish that the person making a transaction is a licensee account holder.

“*Quinella*” means a wager selecting two runners to finish first and second, regardless of the order of finish, and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Quinella double*” means a wager which consists of selecting the quinella in each of two designated contests and is an entirely separate pool from all other pools and has no connection with or relation to any other pool conducted by the facility.

“*Runner*” means each entrant in a contest, designated by a number as a betting interest.

“*Sales transaction data*” means the data between totalizator ticket-issuing machines and the totalizator central processing unit for the purpose of accepting wagers and generating, canceling and cashing pari-mutuel tickets and the financial information resulting from the processing of sales transaction data, such as handle.

“*Secure personal identification code*” means an alpha-numeric character code provided by a licensee account holder as a means by which the licensee or ADWO may verify a wager or account transaction as authorized by the licensee account holder.

“*Show*” means a runner finishing third.

“*Show pool*” means the total amount of money wagered on all betting interests in each contest to finish either first, second or third.

“*Source market fee*” or “*host fee*” means the part of a wager that is made on any race by a person who is a licensee account holder and that is returned to the licensee and the Iowa Horsemen’s Benevolent and Protective Association pursuant to the terms of a negotiated agreement as required by 491—8.6(99D).

“*Steward*” means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

“*Superfecta*” means a wager selecting the exact order of finish for first, second, third, and fourth in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Totalizator*” means a machine for registering wagers and computing odds and payoffs based upon data supplied by each pari-mutuel ticket-issuing machine.

“*Trifecta*” means a wager selecting the exact order of finish for first, second, and third in that race and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Tri-superfecta*” means a wager selecting the exact order of finish for first, second and third in the first designated tri-super contest combined with selecting the exact order of finish for first, second, third and fourth in the second designated tri-super contest.

“*Twin quinella*” means a wager in which the bettor selects the first two finishers, regardless of order, in each of two designated contests. Each winning ticket for the twin quinella must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool.

“*Twin superfecta*” means a wager in which the bettor selects the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool.

“*Twin trifecta*” means a wager in which the bettor selects the three runners that will finish first, second, and third in the exact order as officially posted in each of the two designated twin trifecta races.

“*Underpayment*” means when the payoff to the public resulting from errors in calculating pools and errors occurring in the communication in payoffs results in less money returned to the public than is actually due.

“*Win*” means a runner finishing first.

“*Win pool*” means the total amount wagered on all betting interests in each contest to finish first.

“*Withdrawal*” means a payment of money from an account by the licensee or ADWO to the licensee account holder when properly requested by the licensee account holder.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5423C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6894C, IAB 2/22/23, effective 3/29/23]

#### **491—8.2(99D) General.**

**8.2(1) Wagering.** Each facility shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalizator

shall be tested prior to and during the meeting as required by the commission. Annually, the facility shall have an external audit, approved by the administrator, of the totalizator system. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited, and any person attempting to participate in prohibited wagering shall be ejected or excluded from facility grounds.

**8.2(2) Records.** The facility shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each facility and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to the wagering public at the completion of each contest.

The facility shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

**8.2(3) Pari-mutuel tickets.** A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the facility and is evidence of the obligation of the facility to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The facility shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold and for a specified period after the last day of the meeting as provided in paragraph 8.2(4)“g.”

*a.* To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the facility and recorded as a ticket entitled to a share of the pari-mutuel pool and contain imprinted information as to:

- (1) The name of the facility operating the meeting.
- (2) A unique identifying number or code.
- (3) Identification of the terminal at which the ticket was issued.
- (4) A designation of the performance for which the wagering transaction was issued.
- (5) The contest number for which the pool is conducted.
- (6) The type(s) of wagers represented.
- (7) The number(s) representing the betting interests for which the wager is recorded.
- (8) The amount(s) of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

*b.* No pari-mutuel ticket recorded or reported as previously paid, canceled, or nonexistent shall be deemed a valid pari-mutuel ticket by the facility. The facility may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in paragraph 8.2(4)“e.”

**8.2(4) Pari-mutuel ticket sales.**

*a.* Pari-mutuel tickets shall not be sold by anyone other than a facility licensed to conduct pari-mutuel wagering.

*b.* No pari-mutuel ticket may be sold on a contest for which wagering has already been closed, and no facility shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator is closed for wagering on such contest.

*c.* Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor prior to leaving the seller’s window.

*d.* Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared “official.” Any subsequent change in the order of finish or award of purse money(s) as may result from a subsequent ruling by the stewards or administrator shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.

*e.* The facility shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization from the administrator.

*f.* The facility shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

g. Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender to the facility where the wager was made within 60 days following the close of the meeting during which the wager was made. Failure to present any such ticket within 60 days shall constitute a waiver of the right to receive payment.

**8.2(5) *Advance performance wagering.*** Rescinded IAB 2/22/23, effective 3/29/23.

**8.2(6) *Claims for payment from pari-mutuel pool.*** At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the facility in any case where the facility has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the administrator, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the administrator within 48 hours.

a. In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in paragraph 8.2(3) "a" of these general provisions, the facility shall make a recommendation to accompany the claim forwarded to the administrator as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

b. In the case of a claim made for payment on a pari-mutuel wager, the administrator shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the facility, may deny the claim, or may make such other order as the administrator may deem proper.

**8.2(7) *Payment for errors.*** If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed, and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

a. Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs are equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be added to the corresponding pool of the next contest. If an underpayment is discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the administrator until being added, together with accrued interest, to the corresponding pool of the next meet.

b. Any claim not filed with the facility within 30 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived, and the facility shall have no further liability therefor.

c. In the event the error results in an overpayment to winning wagers, the facility shall be responsible for such payment.

**8.2(8) *Betting explanation.*** A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on facility grounds and available upon request through facility representatives.

**8.2(9) *Display of betting information.***

a. Approximate odds for win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.

b. The probable payoff or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the administrator.

c. Official results and payoffs must be displayed upon each contest being declared official.

**8.2(10) *Canceled contests.*** If a contest is canceled or declared "no contest," refunds shall be granted on valid wagers in accordance with these rules.

**8.2(11) *Refunds.***

a. Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:

(1) Win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two.

(2) Place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half tri-superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three.

(3) Show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four.

b. Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

**8.2(12) *Coupled entries and mutuel fields.***

a. Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

b. For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**8.2(13) *Pools dependent upon betting interests.*** Unless the administrator otherwise provides, at the time the pools are opened for wagering, the facility:

a. May offer win, place, and show wagering on all contests.

b. May prohibit show wagering on any contest with five or fewer betting interests scheduled to start.

c. May prohibit place wagering on any contest with four or fewer betting interests scheduled to start.

d. May prohibit quinella wagering on any contest with three or fewer betting interests scheduled to start.

e. May prohibit quinella double wagering on any contests with three or fewer betting interests scheduled to start.

f. May prohibit exacta wagering on any contest with three or fewer betting interests scheduled to start.

g. May prohibit trifecta wagering on any contest with five or fewer betting interests scheduled to start, or as provided in subparagraph 8.2(13) "g"(1) below:

(1) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the facility.

(2) Reserved.

h. May prohibit superfecta and pentafecta wagering on any contest with seven or fewer betting interests scheduled to start.

i. May prohibit twin quinella wagering on any contests with three or fewer betting interests scheduled to start.

j. May prohibit twin trifecta wagering on any contests with seven or fewer betting interests scheduled to start, except as provided in subparagraph 8.2(13) "g"(1).

k. May prohibit tri-superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

l. May prohibit twin superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

**8.2(14) *Prior approval required for betting pools.***

a. A facility that desires to offer new forms of wagering must apply in writing to the administrator and receive written approval prior to implementing the new betting pool.

b. The facility may suspend previously approved forms of wagering with the prior approval of the administrator. Any carryover shall be held until the suspended form of wagering is reinstated. A facility may request approval of a form of wagering or separate wagering pool for specific requirements.

**8.2(15) *Closing of wagering in a contest.***

a. All wagering shall stop and all pari-mutuel machines shall be locked at post time or at the actual start of the races. Machines shall be automatically locked, unless unusual circumstances dictate that the stewards act differently.

b. The facility shall maintain, in good order, a system approved by the administrator for closing wagering.

**8.2(16) *Complaints pertaining to pari-mutuel operations.***

a. When a patron makes a complaint to a facility regarding the mutuel department, the facility shall immediately issue a complaint report, setting out:

- (1) The name of the complainant;
- (2) The nature of the complaint;
- (3) The name of the persons, if any, against whom the complaint was made;
- (4) The date of the complaint;
- (5) The action taken or proposed to be taken, if any, by the facility.

b. The facility shall submit every complaint report to the commission within five days after the complaint was made.

**8.2(17) *Facility/vendor employees.*** All facility/vendor employees shall report immediately to the administrator any known irregularities or wrongdoings by any person involving pari-mutuel wagering and shall cooperate in subsequent investigations.

**8.2(18) *Unrestricted access.*** The facility shall permit the commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the facility that relate to pari-mutuel wagering.

**8.2(19) *Totalizator breakdown.*** In the event of irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

**8.2(20) *Minimum wager and payoff.*** The minimum wager to be accepted by any licensed facility for win, place and show wagering shall be \$2. The minimum payoff on a \$2 wager shall be \$2.10. For all other wagers, the minimum wager to be accepted by any licensed facility shall be \$1. The minimum payoff for a \$1 wager shall be \$1.05. Any deviation from these minimums must be approved by the administrator. In cases where a minus pool occurs, the facility is responsible for the payment of the minimum payoff and no breakage shall be incurred from that pari-mutuel pool.

**8.2(21) *Underage wagering prohibited.*** No person under the age of 21 shall be permitted by any licensed facility to purchase or cash a pari-mutuel ticket.

**8.2(22) *Emergency situations.*** In the event of an emergency in connection with the mutuel department not covered in these rules, the pari-mutuel manager representing the facility shall report the problem to the stewards, and the stewards shall render a full report to the administrator or administrator's designee within 48 hours.

**8.2(23) *Commission mutuel supervisor.*** The commission may employ a mutuel supervisor with accounting experience to serve as the commission's designated representative at each race meeting as provided in Iowa Code section 99D.19. In the absence of a specifically appointed commission mutuel supervisor, the board of stewards or simulcast steward will perform the functions and duties of the commission.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—8.3(99D) Approval of pari-mutuel wagers.**

**8.3(1) *Pools permitted.*** All pari-mutuel wagering pools approved by the commission shall be separately and independently calculated and distributed. Takeout shall be deducted from each gross pool as stipulated by Iowa Code section 99D.11. The remainder of the moneys in the pool shall constitute the net pool for distribution as payoff on winning wagers.

**8.3(2) *Pari-mutuel wagering submissions.*** Prior to conducting a new pari-mutuel wager, a facility shall submit proposals for the wager including, but not limited to, the wager type, calculation of payoff, refunds and distribution of pools. The wager submission, or requests for modification to an approved

wager, shall be in writing and approved by the administrator or an administrator's designee prior to implementation.

**8.3(3) Public notice.** The public shall have access to the wagering rules and the calculation of payoffs and distribution of pools which are approved by the commission. Signage shall be conspicuously posted in the wagering area to direct patrons to the wagering area where this information can be viewed.  
[ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—8.4(99D) Simulcast wagering.**

##### **8.4(1) General.**

*a. Rules.* All simulcasting must be transmitted live, and all wagering on simulcasting shall be made in accordance with the commission rules on pari-mutuel wagering. Commission rules in effect during live racing shall remain in effect during simulcasting where applicable.

*b. Transmission.* The method used to transmit sales transaction and data including, but not limited to, the odds, will pay, race results, and payoff prices must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory. If the method relies on Internet service to transmit, a backup Internet service shall be used in the event of transmission failure until all transactions are completed for the day.

*c. Communication.* A communication system between the host track and the receiving facility must be provided which will allow the totalizator operator and the commission representatives at the host track to communicate with the facility receiving the signal. The facility is responsible during the racing program's operating hours for reporting any problems or delays to the public.

##### *d. Approval.*

(1) All simulcasting, both interstate and intrastate, must be preapproved by the commission or commission representative. Each facility conducting simulcasting shall submit an annual written simulcast proposal to the commission with the application for license renewal required by 491—Chapter 1.

(2) The commission representative, upon written request, may grant modifications to the annual simulcast proposal. The commission representative may approve or disapprove simulcast requests at the representative's discretion. Factors that may be considered include, but are not limited to, economic conditions of a facility, impact on other facilities, impact on the Iowa breeding industry, other gambling in the state, and any other considerations the commission representative deems appropriate.

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the facility granted simulcast authority to obtain all necessary permission from other jurisdictions and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the facility at all times.

##### **8.4(2) Simulcast host.**

*a.* Every host facility, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. All contracts governing participation in interstate or intrastate pools shall be submitted to the commission representative for prior approval. Contracts shall be of such content and in such format as required by the commission representative.

*b.* A host facility is responsible for the content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.

*c.* Unless otherwise permitted by the commission representative, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from which the simulcast originates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

*d.* The host facility shall maintain such security controls, including encryption over its uplink and communications systems, as directed or approved by the commission or commission representative.

*e.* Financial reports shall be submitted daily or as otherwise directed by the commission representative. Reports shall be of such content and in such format as required by the commission representative.

##### **8.4(3) Authorized receiver.**

- a.* An authorized receiver shall provide:
- (1) Adequate transmitting and receiving equipment of acceptable broadcast quality which shall not interfere with the closed circuit TV system of the host facility for providing any host facility patron information.
  - (2) Pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest facilities.
  - (3) A voice communication system between each guest facility and the host facility providing timely voice contact among the commission representative, placing judges, and mutuel departments.
- b.* The guest facility and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.
- c.* Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests, the guest facility shall initiate a test program of its transmitter, encryption and decoding, and data communication to ensure proper operation of the system.
- d.* The guest facility shall, in conjunction with the host facility(ies) for which it operates pari-mutuel wagering, provide the commission representative with a certified report of its pari-mutuel operations as directed by the commission representative.
- e.* Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.
- f.* The mutuel manager shall notify the commission representative when the transfer of pools, pool totals, or calculations are in question, or if partial or total cancellations occur, and shall suggest alternatives for continued operation. Should loss of video signal occur, wagering may continue with approval from the commission representative.
- [ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 4954C, IAB 2/26/20, effective 4/1/20; ARC 6169C, IAB 2/9/22, effective 3/16/22]

#### **491—8.5(99D) Interstate common-pool wagering.**

##### **8.5(1) General.**

- a.* All contracts governing participation in interstate common pools shall be submitted to the commission representative for prior approval. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Contracts and reports shall be of such content and in such format as required by the commission representative.
- b.* Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.
- c.* Any surcharges or withholdings in addition to the takeout shall be applied only in the jurisdiction otherwise imposing such surcharges or withholdings.
- d.* In determining whether to approve an interstate common pool which does not include the host facility or which includes contests from more than one facility, the commission representative shall consider and may approve use of a bet type which is not utilized at the host facility, application of a takeout rate not in effect at the host facility, or other factors which are presented to the commission representative.
- e.* The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

##### **8.5(2) Guest state participation in interstate common pools.**

- a.* With the prior approval of the commission representative, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state or with corresponding pools established by one or more other jurisdictions.
- b.* The commission representative may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that of the host facility or identical to that of other jurisdictions participating in a merged pool.
- c.* When takeout rates in the merged pools are not identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

- d. Rules established in the state of the host facility designated for a pari-mutuel pool shall apply.
- e. The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.
- f. If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the facility shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere, except that, with the permission of the commission representative, the facility may alternatively determine either to pay winning tickets at the payoff prices at the host facility or to declare such accepted bets void and make refunds in accordance with the applicable rules.

**8.5(3) *Host state participation in merged pools.***

a. With the prior approval of the commission representative, a facility licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other jurisdictions and may also determine that pari-mutuel pools in guest jurisdictions be combined with corresponding wagering pools established by it as the host facility or comparable wagering pools established by two or more jurisdictions.

b. When takeout rates in the merged pool are identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

c. Rules of racing established for races held in this state shall also apply to interstate common pools unless the commission representative specifically determines otherwise.

d. The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

e. Any contract for interstate common pools entered into by the facility shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another jurisdiction into the interstate common pool formed by the facility or if, for any reason, the commission representative or facility determines that attempting to effect transfer of pool data from the guest jurisdiction may endanger the facility's wagering pool, the facility shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

**8.5(4) *Takeout rates in interstate common pools.***

a. With the prior approval of the commission representative, a facility wishing to participate in an interstate common pool may change its takeout rate so as to achieve a common takeout rate with all other participants in the interstate common pool.

b. A facility wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host facility and guest facility jurisdictions with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different jurisdictions into an interstate common pool.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 6169C, IAB 2/9/22, effective 3/16/22]

**491—8.6(99D) Advance deposit wagering.**

**8.6(1) *Authorization to conduct advance deposit wagering.***

a. A licensee may request authorization from the commission to conduct advance deposit wagering pursuant to Iowa Code section 99D.11(6)“c” and this chapter. As part of the request, the licensee shall submit a detailed plan of how its advance deposit wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

b. The commission may conduct investigations or inspections or request additional information from the licensee as the commission deems appropriate in determining whether to allow the licensee to conduct advance deposit wagering.

c. The licensee shall establish and manage an advance deposit wagering center.

d. The commission may issue an ADWO license to an entity that enters into an agreement with the commission, the licensee, and the Iowa Horsemen's Benevolent and Protective Association. The terms of any ADWO's license shall include but not be limited to:

- (1) Any source market fees and host fees to be paid on any races subject to advance deposit wagering.
- (2) An annual ADWO license fee in an amount to be determined by the commission.
- (3) Completion of all necessary background investigations.
- (4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County from all of its licensee account holders.
- (5) A bond or irrevocable letter of credit on behalf of the ADWO to be determined by the commission.
- (6) A detailed description and certification of systems and procedures used by the ADWO to validate the identity and age of licensee account holders and to validate the legality of wagers accepted.
- (7) Certification of prompt commission access to all records relating to licensee account holder identity and age in hard-copy or standard electronic format acceptable to the commission.
- (8) Certification of secure retention of all records related to advance deposit wagering and accounts for a period of not less than three years or such longer period as specified by the commission.
- (9) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

*e.* Commission access to and use of information concerning advance deposit wager transactions and licensee account holders shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

*f.* For each advance deposit wager made for an account by telephone, the licensee or ADWO shall make a voice recording of the entire transaction and shall not accept any such wager if the voice-recording system is inoperable. Voice recordings shall be retained for not less than six months and shall be made available to the commission for investigative purposes.

**8.6(2) *Establishing an account.***

*a.* A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee's facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include the applicant's full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission. The licensee and ADWO shall have a process to verify that the player is not on the statewide self-exclusion list set forth in Iowa Code section 99D.7(23) prior to establishing an account. The licensee and ADWO shall review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program and comply with all other requirements set forth by the commission and in Iowa Code section 99D.7(23).

*b.* Each application submitted will be subject to electronic verification with respect to the applicant's name, principal residence address and date of birth by either a national, independent individual reference service company or by means of a technology which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies. An applicant's social security number may be necessary for completion of the verification process and for tax-reporting purposes. If there is a discrepancy between the application submitted and the information provided by the electronic verification or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If these measures prove unsatisfactory, then the applicant will be contacted and given instructions as to how to resolve the matter.

*c.* The identity of a licensee account holder must be verified via electronic means or copies of other documents before the licensee account holder may place an advance deposit wager.

*d.* Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensee or ADWO provided that the licensee or ADWO informs the licensee account holder in writing prior to the change.

*e.* The applicant shall provide the licensee or ADWO with an alpha-numeric code to be used as a secure personal identification code when the licensee account holder is placing an advance deposit wager. The licensee account holder has the right to change this code at any time.

*f.* The licensee account holder shall receive at the time the account is approved a unique account identification number; a copy of the advance deposit wagering rules and such other information and material pertinent to the operation of the account; and such other information as the licensee, ADWO or commission may deem appropriate.

*g.* The account is nontransferable.

*h.* The licensee or ADWO may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information used to open an account was false or that the account has been used in violation of these rules or the licensee's or ADWO's terms and conditions.

**8.6(3) *Operation of an account.*** The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval. The submission shall include controls and reasonable methods that provide for the following:

*a.* Written notification to the commission consistent with 491—paragraph 5.4(5) “c.”

*b.* The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

*c.* User access controls for all sensitive and secure, physical and virtual, areas and systems within a wagering operation.

*d.* Problem gambling controls consistent with 491—subrule 5.4(12).

*e.* Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.

**8.6(4) *Records.*** Licensees shall provide all information requested by the commission. Access to this information shall be prompt, and copies of the information shall be delivered within seven days or less as ordered or requested by the commission. The licensees shall ensure all books and records and the retention of all books and records comply with 491—subrule 5.4(14). All records pertaining to contests shall be available to allow for player complaint resolution. All records pertaining to the accounts of people who registered or have account activity in Iowa shall be available to allow for audits and investigations.

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#### **491—8.7(99D) Alternative simulcast operator.**

**8.7(1) *Authorization to conduct alternative simulcast.***

*a.* An entity may request authorization from the commission to conduct alternative simulcast wagering pursuant to Iowa Code section 99D.9D and this chapter. As part of the request, the entity shall submit a detailed plan of how its wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

*b.* The commission may conduct investigations or inspections or request additional information from the entity as the commission deems appropriate in determining whether to allow an entity to conduct an alternative simulcast operation.

*c.* The entity shall establish and manage an alternative simulcast wagering center.

*d.* The commission may issue an ASO license that complies with the requirements of Iowa Code section 99D.9D and the additional criteria as established by the commission. The terms of any ASO license shall include but not be limited to:

(1) Fees to be paid on any races subject to pari-mutuel wagering.

(2) An annual license fee in an amount to be determined by the commission.

- (3) Completion of all necessary background investigations as determined by the commission.
- (4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County.
- (5) A bond or irrevocable letter of credit on behalf of the alternative simulcast operator to be determined by the commission.
- (6) Certification of secure retention of all records related to alternative simulcast and off-track wagering for a period of not less than three years or such longer period as specified by the commission.
- (7) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

*e.* Commission access to and use of information concerning alternative simulcast and off-track wager transactions shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

**8.7(2) Operation of an ASO.** The ASO shall submit operating procedures and controls that provide for the following:

- a.* Written notification to the commission consistent with 491—paragraph 5.4(5) “c.”
- b.* The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee’s duties.
- c.* User access controls for all sensitive and secure, physical and virtual, areas and systems within a wagering operation.
- d.* Problem gambling controls consistent with 491—subrule 5.4(12).
- e.* Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.

[ARC 6894C, IAB 2/22/23, effective 3/29/23]

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CHAPTER 10  
THOROUGHBRED AND QUARTER HORSE RACING

**491—10.1(99D) Terms defined.** As used in the rules, unless the context otherwise requires, the following definitions apply:

“*Age*” means the age of a horse reckoned from the first day of January of the year of foaling.

“*Allowance race*” means an overnight race for which eligibility and weight to be carried are determined according to specified conditions that include age, sex, earnings, and number of wins.

“*Also eligible*” means:

1. A number of eligible horses, properly entered, which were not drawn for inclusion in a race but which become eligible according to preference or lot when an entry is scratched prior to the scratch time deadline; or

2. The next preferred nonqualifier for the finals or consolation from a set of elimination trials that will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

“*Appeal*” means a request for the commission or its designee to investigate, consider, and review any decisions or rulings of stewards.

“*Arrears*” means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

“*Authorized agent*” means a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner on whose behalf the agent will act.

“*Bleeder*” means a horse that hemorrhages from within the respiratory tract during a race, within one and one-half hours postrace, during exercise or within one and one-half hours of exercise.

“*Bleeder list*” means a tabulation of all bleeders to be maintained by the commission.

“*Chemist*” means any official racing chemist designated by the commission.

“*Claiming race*” means a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules. (See also waived claiming rule in paragraph 10.6(18)“k.”)

“*Commission*” means the racing and gaming commission.

“*Conditions*” means qualifications that determine a horse’s eligibility to be entered in a race.

“*Contest*” means a competitive racing event on which pari-mutuel wagering is conducted.

“*Coupled entry*” means two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes. (See also “Entry.”)

“*Day*” means a 24-hour period ending at midnight.

“*Dead heat*” means when the noses of two or more horses reach the finish line of a race at the same time.

“*Declaration*” means the act of withdrawing an entered horse from a race prior to the closing of entries.

“*Detention barn*” means the barn designated for the collection from horses of test samples under the supervision of the commission veterinarian; also the barn assigned by the commission to a horse on the bleeder list, for occupancy as a prerequisite for receiving bleeder medication.

“*Entry*” means a horse made eligible to run in a race; or two or more horses, entered in the same race, which have common ties of ownership, lease, or training. (See also “Coupled entry.”)

“*Facility*” means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

“*Facility premises*” means all real property utilized by the facility in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities, parking lots, and any other areas under the jurisdiction of the commission.

“*Field or mutuel field*” means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track

totalizator. The highest numbered horse within the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.

*“Foreign substances”* means all substances except those that exist naturally in the untreated horse at normal physiological concentration.

*“Forfeit”* means money due from a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by the stewards or the commission.

*“Handicap”* means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

*“Horse”* means any equine (including equine designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing; specifically, an entire male 5 years of age and older.

*“Hypodermic injection”* means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.

*“Inquiry”* means an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

*“Jockey”* means a professional rider licensed to ride in races.

*“Licensee”* means any person or entity licensed by the commission to engage in racing or related regulated activity.

*“Maiden race”* means a contest restricted to nonwinners.

*“Meet/meeting”* means the specified period and dates each year during which a facility is authorized by the commission to conduct pari-mutuel wagering on horse racing.

*“Month”* means a calendar month.

*“Nomination”* means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

*“Nominator”* means the person or entity in whose name a horse is nominated for a race or series of races.

*“Objection”* means:

1. A written complaint made to the stewards concerning a horse entered in a race and filed not later than one hour prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or

2. A verbal claim of foul in a race lodged by the horse’s jockey, trainer, owner, or the owner’s authorized agent before the race is declared official.

*“Official starter”* means the official responsible for dispatching the horses for a race.

*“Official time”* means the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

*“Overnight race,”* also known as a purse race, means a contest for which entries close at a time set by the racing secretary.

*“Owner”* means a person or entity that holds any title, right or interest, whole or partial, in a horse, including the lessee and lessor of a horse.

*“Paddock”* means an enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

*“Performance”* means a schedule of 8 to 12 races per day unless otherwise authorized by the commission.

*“Post position”* means the preassigned position from which a horse will leave the starting gate.

*“Post time”* means the scheduled time for horses to arrive at the starting gate for a contest.

*“Prize”* means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

*“Purse”* means the total cash amount for which a race is contested.

*“Purse race”* means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse.

“*Race*” means a running contest between horses ridden by jockeys for a purse, prize, or other reward run at a facility in the presence of the stewards of the meeting. This includes purse races, overnight races and stakes races.

“*Recognized meeting*” means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and the commission for the mutual enforcement of rulings relating to horse racing.

“*Rules*” means the rules promulgated by the commission to regulate the conduct of horse racing.

“*Scratch*” means the act of withdrawing an entered horse from a contest after the closing of entries.

“*Scratch time*” means the deadline set by the facility for withdrawal of entries from a scheduled performance.

“*Smoke*” means the procedure of reviewing entries for correctness, eligibility, weight allowances, and medications.

“*Stakes race*” means a contest in which nomination (if applicable), entry, and starting fees contribute to the purse. No overnight race shall be considered a stakes race. Special designations or classifications for stakes races such as “graded stakes” or “black type” shall be determined by the appropriate breed registries or recognized authorities.

“*Starter*” means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

“*Steward*” means a duly appointed racing official with powers and duties specified by rules.

“*Subscription*” means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.

“*Test level*” means the concentration of a foreign substance found in the test sample.

“*Test sample*” means any bodily substance including, but not limited to, blood, urine, or hair taken from a horse under the supervision of the commission veterinarian and as prescribed by the commission for the purpose of analysis.

“*Totalizator*” means the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds, and payoff prices to patrons at a pari-mutuel wagering facility.

“*Veterinarian*” means a veterinarian holding a current unrestricted license issued by the state of Iowa veterinary regulatory authority and licensed by the commission.

“*Winner*” means the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

“*Year*” means a calendar year.

[ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 4194C, IAB 12/19/18, effective 1/23/19]

#### **491—10.2(99D) Facilities’ responsibilities.**

**10.2(1) *Stalls.*** The facility shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

**10.2(2) *Paddocks and equipment.*** The facility shall ensure that paddocks, starting gates, and other equipment subject to contact by different animals are kept in a clean condition and free of dangerous surfaces.

**10.2(3) *Receiving barn and stalls.*** Each facility shall provide a conveniently located receiving barn or stalls for the use of horses arriving during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The facility shall employ attendants to operate and maintain the receiving barn or stalls in a clean and healthy condition.

**10.2(4) *Fire protection.*** The facility shall develop and implement a program for fire prevention on facility premises in accordance with applicable state fire codes. The facility shall instruct employees working on facility premises in procedures for fire prevention and evacuation. The facility shall, in accordance with state fire codes, prohibit the following:

- a. Smoking in horse stalls, feed and tack rooms, and in the alleyways.

- b. Sleeping in feed rooms or stalls.
- c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area.
- d. Leaving any electrical appliance unattended or in unsafe proximity to walls, beds, or furnishings.
- e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.
- f. Locking a stall which is occupied by a horse.

The facility shall post a notice in the stable area which lists the prohibitions outlined in 10.2(4) "a" to "f" above.

**10.2(5) Starting gate.**

- a. During racing hours a facility shall provide at least two operable padded starting gates that have been approved by the commission.
- b. During designated training hours a facility shall make at least one starting gate and qualified starting gate employee available for schooling.
- c. If a race is started at a place other than in a chute, the facility shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

**10.2(6) Distance markers.**

- a. A facility shall provide and maintain starting point markers and distance poles in a size and position that can be clearly seen from the steward's stand.
- b. The starting point markers and distance poles must be marked as follows:

1/4 poles	red and white horizontal stripes
1/8 poles	green and white horizontal stripes
1/16 poles	black and white horizontal stripes
220 yards	green and white
250 yards	blue
300 yards	yellow
330 yards	black and white
350 yards	red
400 yards	black
440 yards	red and white
550 yards	black and white horizontal stripes
660 yards	green and white horizontal stripes
770 yards	black and white horizontal stripes
870 yards	blue and white horizontal stripes

**10.2(7) Detention enclosure.** Each facility shall maintain a detention enclosure for use by the commission for securing samples of urine, saliva, blood, hair, or other bodily substances or tissues for chemical analysis from horses that have run in a race. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative licensed by the commission shall be with a horse in the detention barn at all times.

**10.2(8) Ambulance.** A facility shall maintain, on the premises during every day that its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, equipped according to prevailing standards and staffed by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the facility to comply with this rule.

**10.2(9) Helmets and vests.** Any person on horseback on facility grounds shall wear a protective helmet and safety vest.

*a.* A jockey participating in a race shall have a helmet that is not altered and complies with one of the following standards:

- (1) American Society for Testing and Materials (ASTM 1163).
- (2) European Standards (EN-1384 or PAS-015 or VG1).
- (3) Australian/New Zealand Standards (AS/NZ 3838).
- (4) ARB HS 2012.
- (5) Snell Equestrian Standard 2001.

*b.* A jockey participating in a race shall have a vest that is not altered and complies with one of the following minimum safety standards:

- (1) British Equestrian Trade Association (BETA) 2000 Level 1.
- (2) Euro Norm (EN) 13158:2000 Level 1.
- (3) American Society for Testing and Materials (ASTM) F2681-08 or F1937.
- (4) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3.
- (5) Australian Racing Board (ARB) Standard 1.1998.

**10.2(10) Racetrack.**

*a.* The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the jockeys and racing animals.

*b.* Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

*c.* A facility shall provide an adequate drainage system for the racetrack.

*d.* A facility shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The facility shall provide backup equipment for maintaining the track surface. A facility that conducts races on a turf track shall:

- (1) Maintain an adequate stockpile of growing medium; and
- (2) Provide a system capable of adequately watering the entire turf course evenly.

*e.* Rails.

(1) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed, and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

**10.2(11) Patrol films or video recordings.** Each facility shall provide:

*a.* A video recording system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

*b.* One camera, designated by the commission, to record the prerace loading of all horses into the starting gate and to continue to record until the field is dispatched by the starter.

*c.* One camera, designated by the commission, to record the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

*d.* At the discretion of the stewards, video camera operators to record the activities of any horses or persons handling horses prior to, during, or following a race.

*e.* That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

*f.* Upon request of the commission, without cost, a copy of a video recording of a race.

g. That video recordings recorded prior to, during, and following each race be maintained by the facility for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a video recording of a race.

i. Following any race in which there is an inquiry or objection, the video recorded replays of the incident in question which were utilized by the stewards in making their decision. The facility shall display to the public these video recorded replays on designated monitors.

**10.2(12) Communications.**

a. Each facility shall provide and maintain in good working order a communication system between:

- (1) The stewards' stand;
- (2) The racing office;
- (3) The tote room;
- (4) The jockeys' room;
- (5) The paddock;
- (6) The test barn;
- (7) The starting gate;
- (8) The weigh-in scale;
- (9) The video camera locations;
- (10) The clocker's stand;
- (11) The racing veterinarian;
- (12) The track announcer;
- (13) The location of the ambulances (equine and human); and
- (14) Other locations and persons designated by the commission.

b. A facility shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

[ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 5423C, IAB 2/10/21, effective 3/17/21]

**491—10.3(99D) Facility policies.** It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the facility policies as published in literature distributed by the facility or posted in a conspicuous location.

**491—10.4(99D) Racing officials.**

**10.4(1) General description.** Every facility conducting a race meeting shall appoint at least the following officials:

- a. One of the members of a three-member board of stewards;
- b. Racing secretary;
- c. Assistant racing secretary;
- d. Paddock judge;
- e. Horse identifier;
- f. Starter;
- g. Clocker/timer;
- h. Three placing judges;
- i. Jockey room custodian;
- j. Mutuel manager;
- k. Clerk of scales;
- l. Minimum of two outriders;
- m. Horsemen's bookkeeper;
- n. Any other person designated by the commission.

**10.4(2) Officials' prohibited activities.** No racing official or racing official's assistant(s) listed in 10.4(1) while serving in that capacity during any meeting may engage in any of the following:

- a. Enter into a business or employment that would be a conflict of interest, interfere with, or conflict with the proper discharge of duties including a business that does business with a facility or a business issued a concession operator's license;
- b. Participate in the sale, purchase, or ownership of any horse racing at the meeting;
- c. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
- d. Sell or solicit horse insurance on any horse racing at the meeting, or any other business sales or solicitation not a part of the official's duties;
- e. Wager on the outcome of any race under the jurisdiction of the commission;
- f. Accept or receive money or anything of value for the official's assistance in connection with the official's duties;
- g. Consume or be under the influence of alcohol or any prohibited substance while performing official duties.

**10.4(3) *Single official appointment.*** No official appointed to any meeting, except placing judges, may hold more than one official position listed in 10.4(1) unless, in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interest or duties in the two appointments.

**10.4(4) *Stewards.*** (For practice and procedure before the stewards and the commission, see 491—Chapter 4.)

a. *General authority.*

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the racing meet in accordance with the laws of this state and the rules adopted by the commission. The stewards shall have authority to regulate and to resolve conflicts or disputes between all other racing officials, licensees, and those persons addressed by 491—paragraph 4.6(5) "e," which are reasonably related to the conduct of a race or races and to discipline violators of these rules in accordance with the provisions of these rules.

(2) Period of authority. The stewards' authority as set forth in this subrule shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet or with the completion of their business pertaining to the meeting.

(3) Attendance. All three stewards shall be present in the stand during the running of each race.

(4) Appointment of substitute. Should any steward be absent at race time, the state steward(s) shall appoint a deputy for the absent steward. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(5) Initiate action. The stewards shall take notice of questionable conduct or rule violations, with or without complaint, and shall initiate investigations promptly and render a decision on every objection and every complaint made to them.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final.

b. *Other powers and authority.*

(1) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(2) All questions within their authority shall be determined by a majority of the stewards.

(3) The stewards shall have control over and access to all areas of the facility premises.

(4) The stewards shall have the authority to determine all questions arising with reference to entries and racing. Persons entering horses to run at licensed facilities agree in so doing to accept the decision of the stewards on any questions relating to a race or racing. The stewards, in their sole discretion, are authorized to determine whether two or more individuals or entities are operating as a single financial interest or as separate financial interests. In making this determination, the stewards shall consider all relevant information including, but not limited to, the following:

1. Whether the parties pay bills from and deposit receipts in the same accounts.
2. Whether the parties share resources such as employees, feed, supplies, veterinary and farrier services, exercise and pony riders, tack, and equipment.
3. Whether the parties switch horses or owner/trainer for no apparent reason, other than to avoid restrictions of being treated as a single interest.
4. Whether the parties engage in separate racing operations in other jurisdictions.
5. Whether the parties have claimed horses, or transferred claimed horses after the fact, for the other's benefit.
6. If owners, whether one owner is paying the expenses for horses not in the owner's name as owner.
7. If trainers, whether the relationship between the parties is more consistent with that of a trainer and assistant trainer.

(5) The stewards shall have the authority to discipline, for violation of the rules, any person subject to their control and, in their discretion, to impose fines or suspensions or both for infractions.

(6) The stewards shall have the authority to order the exclusion or ejection from all premises and enclosures of the facility any person who is disqualified for corrupt practices on any race course in any country.

(7) The stewards shall have the authority to call for proof that a horse is itself not disqualified in any respect, or nominated by, or, wholly or in part, the property of, a disqualified person. In default of proof being given to their satisfaction, the stewards may declare the horse disqualified.

(8) The stewards shall have the authority at any time to order an examination of any horse entered for a race or which has run in a race.

(9) In order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, the stewards have the authority to authorize a person(s) on their behalf to enter into or upon the buildings, barns, motor vehicles, trailers, or other places within the premises of a facility, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(10) The stewards shall maintain a log of all infractions of the rules and of all rulings of the stewards upon matters coming before them during the race meet.

(11) The state stewards must give prior approval for any person other than the commissioners or commission representative to be allowed in the stewards' stand.

*c. Emergency authority.*

(1) Substitute officials. When in an emergency, any official is unable to discharge the official's duties, the stewards may approve the appointment of a substitute and shall report it immediately to the commission.

(2) Substitute jockeys. The stewards have the authority, in an emergency, to place a substitute jockey on any horse in the event the trainer does not do so. Before using that authority, the stewards shall in good faith attempt to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and inform the stewards of the substitution by 30 minutes prior to post time, then the stewards may appoint under this rule.

(3) Substitute trainer. The stewards have the authority in an emergency to designate a substitute trainer for any horse.

(4) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

(5) Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

(6) Nonstarter. At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

*d. Investigations and decisions.*

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses

and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses. The stewards shall submit a written report to the commission of every such inquiry made by them.

(2) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(3) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race. The stewards at their discretion may determine if there was sufficient interference or intimidation to affect the outcome of the race and take the appropriate actions thereafter.

2. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

(4) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and shall file reports daily with the commission.

1. Involving fraud. Protests involving fraud may be made by any person at any time. The protest must be made to the stewards.

2. Not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse, authorized agent, trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of scales, the stewards, or a person designated by the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made, unless entered prior to the start of the race.

3. Protest to clerk of scales. A jockey who intends to enter a protest following the running of any race, and before the race is declared official, shall notify the clerk of scales, or a person designated by the stewards, of this intention immediately upon the arrival of the jockey at the scales.

4. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's bookkeeper until the protest is decided.

5. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards not later than one hour before post time of the race out of which the protest arises.

6. Frivolous protests. No person shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

*e. Cancel wagering.* The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races if such action is necessary to protect the integrity of pari-mutuel wagering.

**10.4(5) Racing secretary.**

*a. General authority.* The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and recording of race results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, and smoked. Exceptions to this rule must be approved by the stewards.

*b. Conditions.* The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Corrections to the conditions must be made before entries are taken.

*c. Posting of entries.* Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the office of the racing secretary and shall furnish that list to local newspaper, radio, and television stations.



Distance	Age	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	Five Years and Up	126	126	126	126	126	126	126	126	126	126	126	126
	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
TWO MILES	Three Years	96	96	102	102	106	109	112	114	117	119	120	120
	Four Years	124	124	126	126	126	126	126	125	125	124	124	124
	Five Years and Up	126	126	126	126	126	126	126	125	125	124	124	124

(2) Weights listed.

1. In races of intermediate lengths, the weights for the shorter distance shall be carried.
2. In a race exclusively for two-year-olds, the weight shall be 122 pounds.
3. In a race exclusively for three-year-olds or four-year-olds, the weight shall be 126 pounds.

(3) Minimum weight.

1. Thoroughbreds. In all overnight races for two-year-olds, three-year-olds, or four-year-olds and older, the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicaps or to races written for three-year-olds and older.

2. Quarter horse and mixed races. In all overnight races for two-year-olds, the weight shall be 120 pounds; for three-year-olds, the weight shall be 122 pounds; and for four-year-olds and older, the weight shall be 124 pounds.

3. Quarter horse and mixed races. In qualifying for a speed index, standard weight shall be 120 pounds. Should any horse carry less than this amount in a race, one-tenth of a second will be added to the official time for each four pounds or fraction thereof less than 120 pounds.

(4) Sex allowances. In thoroughbred racing, sex allowances are obligatory. Sex allowances shall be applied in all thoroughbred races unless the conditions of the race expressly state to the contrary. If the conditions of the race are silent as to sex allowances, a sex allowance shall be applied. Sex allowances may not be declined. Two-year-old fillies shall be allowed three pounds; mares three years old and older are allowed five pounds before September 1 and three pounds thereafter. Sex allowances are not applicable for quarter horse or mixed races.

(5) Iowa-foaled horse allowance. Iowa-foaled horses that are properly registered and whose papers are stamped, physically or digitally, by the Iowa department of agriculture and land stewardship shall be allowed an additional three pounds beyond the stated conditions of the race if the race is not limited to Iowa-foaled horses. This allowance does not apply to stakes races.

*h. Penalties not cumulative.* Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.

*i. Winnings.*

(1) All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings shall be determined on the basis of the normal rate of exchange prevailing on the day of the win. The amount of purse money earned is credited in United States currency, and there shall be no appeal for any loss on the exchange rate at the time of transfer from United States currency to that of another country.

(2) Winnings considered from January 1. Winnings during the year shall be reckoned by the racing secretary from the preceding January 1.

(3) Winner of a certain sum. "Winner of a certain sum" means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator shall be deducted from the amount won. In all stakes races, the winnings shall be computed on the value of the gross earnings.

(4) Winner's award. Rescinded IAB 5/16/01, effective 6/20/01.

*j. Cancellation of a race.* The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the race is canceled, any and all fees paid in connection with the race shall be refunded.

*k. Coggins test.* The racing secretary shall ensure that all horses have a current negative Coggins test. The racing secretary shall report all expired certificates to the stewards.

*l. Registrations and supporting documents.* The racing secretary shall be responsible for receiving, inspecting, and safeguarding all registrations and supporting documents submitted by the trainer while the horses are located on facility premises. Upon notification from a trainer of an alteration of the sex of a horse, the racing secretary shall note such alteration on the certificate of registration. Disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

**10.4(6) Paddock judge.**

*a. General authority.* The paddock judge shall:

- (1) Supervise the assembly of horses in the paddock no later than 15 minutes before the scheduled post time for each race;
- (2) Maintain a written record of all equipment, inspect all equipment of each horse saddled, and report any change thereof to the stewards;
- (3) Prohibit any change of equipment without the approval of the stewards;
- (4) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time and leave the paddock for the post in proper sequence;
- (5) Supervise paddock schooling of all horses approved for such by the stewards;
- (6) Report to the stewards any observed cruelty to a horse; and
- (7) Ensure that only properly authorized persons are permitted in the paddock.

*b. Paddock judge's list.*

- (1) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.
- (2) At the end of each day, the paddock judge shall provide a copy of the list to the stewards.
- (3) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

**10.4(7) Horse identifier.** The horse identifier shall:

- a.* When required, ensure the safekeeping of registration certificates and racing permits for horses stabled or racing on facility premises;
- b.* Inspect documents of ownership, eligibility, registration, or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;
- c.* Examine every starter in the paddock for sex, color, markings, microchip, lip tattoo, or digital tattoo for comparison with its registration certificate to verify the horse's identity;
- d.* Supervise the tattooing, digital tattooing, microchipping or branding for identification of any horse located on facility premises; and
- e.* Report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

**10.4(8) Starter.**

*a. General authority.* The starter shall:

- (1) Have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;
- (2) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;
- (3) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions on race day before post time for each race;

(4) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and make said assessment known to the stewards; and

(5) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.

*b. Assistant starters.* With respect to an official race, the assistant starters shall not:

(1) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(2) Impede the start of a race;

(3) Use excessive force, a whip or other device, with the exception of steward-approved tongs, to assist in loading a horse into the starting gate;

(4) Slap, boot, or otherwise dispatch a horse from the starting gate;

(5) Strike or use abusive language to a jockey; or

(6) Accept or solicit any gratuity or payment other than their regular salary, directly or indirectly, for services in starting a race.

*c. Starter's list.* No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Any horse on the starter's list shall be refused entry until the horse has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter.

**10.4(9) Timer/clocker.**

*a. General authority—timer.*

(1) The timer shall accurately record the official time.

(2) At the end of a race, the timer shall post the official running time on the infield totalizator board on instruction by the stewards.

(3) At a facility equipped with an appropriate infield totalizator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(4) For backup purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least two stopwatches are used by the stewards or their representatives.

(5) The timer shall maintain, and make available for inspection by the stewards or the commission on request, a written record of fractional and finish times of each race.

*b. General authority—clocker.*

(1) The clocker shall be present during training hours at each track on facility premises which is open for training to identify each horse working out and to accurately record the distances and times of each horse's workout.

(2) Each day, the clocker shall prepare a list of workouts that includes the name of each horse which worked along with the distance and time of each horse's workout.

(3) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

**10.4(10) Placing judges.**

*a. General authority.* The placing judges shall determine the order of finish in a race as the horses pass the finish line and, with the approval of the stewards, may display the results on the totalizator board.

*b. Photo finish.*

(1) In the event the placing judges or the stewards request a photo of the finish, the photo finish sign shall be posted on the totalizator board.

(2) Following their review of the photo finish film strip, the placing judges shall, with the approval of the stewards, determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalizator board.

(3) In the event a photo was requested, the placing judges shall cause a photographic print of said finish to be produced. The finish photograph shall, when needed, be used by the placing judges as an aid in determining the correct order of finish.

(4) Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four finishers, the placing judges shall cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the facility.

*c. Dead heats.*

(1) In the event the placing judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

(2) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing judges shall post the dead heat sign on the totalizator board and cause the numbers of the horse or horses involved to blink on the totalizator board.

**10.4(11) Jockey room custodian.** The jockey room custodian shall:

- a.* Supervise the conduct of the jockeys and their attendants while they are in the jockey room;
- b.* Keep the jockey room clean and safe for all jockeys;
- c.* Ensure all jockeys are in the correct colors and wearing the correct arm number before leaving the jockey room to prepare for mounting their horses;
- d.* Keep a daily film list as dictated by the stewards and have it displayed in plain view for all jockeys;
- e.* Keep a daily program displayed in plain view for the jockeys;
- f.* Keep unauthorized persons out of the jockey room;
- g.* Report to the stewards any unusual occurrences in the jockey room or infraction of the rules with respect to helmets and vests;
- h.* Assist the clerk of scales as required;
- i.* Supervise the care and storage of racing colors; and
- j.* Assign to each jockey a locker for the use of storing the jockey's clothing, equipment, and personal effects.

**10.4(12) Mutuel manager.** The mutuel manager is responsible for the operation of the mutuel department. The mutuel manager shall ensure that any delays in the running of official races caused by totalizator malfunctions are reported to the stewards. The mutuel manager shall submit a written report on any delay when requested by the state steward.

**10.4(13) Clerk of scales.** The clerk of scales shall:

- a.* Verify the presence of all jockeys in the jockey room at the appointed time;
- b.* Verify that each jockey has a current jockey's license issued by the commission;
- c.* Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;
- d.* Oversee the security of the jockey room including the conduct of the jockeys and their attendants;
- e.* Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;
- f.* Maintain the record of applicable winning races on all apprentice certificates at the meeting;
- g.* Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet;
- h.* Assume the duties of the jockey room custodian in the absence of such employee; and
- i.* Promptly report to the stewards any infraction of the rules with respect to riding equipment; safety equipment, including, but not limited to, helmets and vests; riding crops; or conduct.

**10.4(14) Outrider.**

*a.* The facility shall appoint a minimum of two outriders on the main track for each race of a performance and during workouts. The facility shall appoint one outrider on the training track during all workouts. The outriders must be neat in appearance, wear approved helmets with the chin straps securely fastened, and wear approved safety vests while on the main track or training track.

*b.* The outriders shall:

- (1) Accompany the field of horses from the paddock to the post;

(2) Ensure the post parade is conducted in an orderly manner, with all jockeys and pony riders conducting themselves in a manner in conformity with the best interests of racing as determined by the board of stewards;

(3) Assist jockeys with unruly horses;

(4) Render assistance when requested by a jockey;

(5) Be present during morning workouts to assist exercise riders as required by regulations;

(6) Promptly report to the stewards any unusual conduct which occurs while performing the duties of an outrider;

(7) Ensure individuals using the track(s) are appropriately licensed; and

(8) Promptly report jockey objections to the stewards after the finish of each race.

**10.4(15) *Horsemen's bookkeeper.***

*a.* General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the facility and commission may prescribe.

*b.* Records.

(1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements, and registrations of authorized agents.

(3) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the facility.

(4) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time.

*c.* Moneys and funds on account.

(1) All moneys and funds on account with the horsemen's bookkeeper shall be maintained:

1. Separate and apart from moneys and funds of the facility;

2. In a trust account designated as "horsemen's trust account"; and

3. In an account insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The horsemen's bookkeeper shall be bonded.

*d.* Payment of purses.

(1) The horsemen's bookkeeper shall receive, maintain, and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, all applicable taxes, and other moneys that properly come into the horsemen's bookkeeper's possession in accordance with the provisions of commission rules.

(2) The horsemen's bookkeeper may accept moneys due, belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(3) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, and jockey fees, upon request, within two race days of the conclusion of the race day for all horses that were not selected for postrace drug testing.

(4) For horses that were selected for postrace drug testing, the horsemen's bookkeeper shall disburse the purse of such horses for each race and all stakes, entrance money, and jockey fees, upon request, within two race days of receipt of notification that all tests with respect to such horses have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(5) Absent a prior request, the horsemen's bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such horses that have been selected for postrace drug testing have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse of such horses having been selected for posttrace drug testing within two race days of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

*e.* No portion of purse money other than jockey fees shall be deducted by the facility for itself or for another, unless so requested in writing by the person to whom purse moneys are payable or the person's duly authorized representative. The horsemen's bookkeeper shall mail to each owner a duplicate of each record of all deposits, withdrawals, or transfers of funds affecting the owner's racing account at the close of each race meeting.

*f.* Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

**10.4(16) Patrol judges.**

*a.* *General authority.* A facility may employ patrol judges who shall observe the running of the race and report information concerning the running of the race to the stewards.

*b.* *Duty stations.* Each patrol judge shall have a duty station assigned by the stewards.

**10.4(17) Commission veterinarians.**

*a.* The veterinarians shall advise the commission and the stewards on all veterinary matters.

*b.* The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23(2) and 99D.25(9). The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

*c.* The commission veterinarians shall not buy or sell any horse under their supervision; wager on a race under their supervision; or be licensed to participate in racing in any other capacity.

*d.* The stewards or commission veterinarians may request any horse entered in a race to undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse's legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

*e.* A commission veterinarian shall inspect all of the horses in a race at the starting gate and after the finish of a race shall observe the horses upon their leaving the track.

*f.* The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound, or unfit to race on a veterinarian's list that shall be posted in a conspicuous place available to all owners, trainers, and officials.

*g.* A horse placed on the veterinarian's list in Iowa, bleeders exempt, may be allowed to enter only after it has been approved by the commission veterinarian. Any horse placed on the veterinarian's list will be removed from any future race in which the horse has been entered. Requests for the removal of any horse from the veterinarian's list will be accepted only after a minimum of three calendar days have elapsed from the placing of the horse on the veterinarian's list. Removal from the list will be at the discretion of the commission veterinarian, who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified. Horses that are entered to race and then placed on the veterinarian's list for any reason will not be allowed to enter a race for a minimum of three calendar days beginning the day after the horse was scheduled to race.

Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

- (1) First incident – 14 days.
- (2) Second incident within 365-day period – 30 days.
- (3) Third incident within 365-day period – 180 days.
- (4) Fourth incident within 365-day period – barred for racing lifetime.

For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period. The voluntary administration of furosemide without

an external bleeding incident shall not subject the horse to the initial period of ineligibility specified in subparagraph (1). A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal. A horse which has been placed on a bleeder list in another jurisdiction pursuant to these rules shall be placed on a bleeder list in this jurisdiction.

*h.* The commission veterinarians shall supervise and ensure that the administration of furosemide and phenylbutazone is in compliance with Iowa Code section 99D.25A.

*i.* Rescinded IAB 9/29/04, effective 11/3/04.

*j.* The commission veterinarian or commission representative shall take receipt of veterinary reports as required by Iowa Code section 99D.25(10).

[ARC 0734C, IAB 5/15/13, effective 6/19/13; see Delay note at end of chapter; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4954C, IAB 2/26/20, effective 4/1/20; ARC 5423C, IAB 2/10/21, effective 3/17/21]

#### **491—10.5(99D) Trainer, jockey, and jockey agent responsibilities.**

##### **10.5(1) Trainer.**

*a. Responsibility.* The trainer is responsible for:

(1) The condition of horses entered in an official workout or race and, in the absence of substantial evidence to the contrary, for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses, regardless of the acts of third parties. A positive test for a prohibited drug, medication, or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D.

(2) Preventing the administration of any drug, medication, or other prohibited substance that may cause a violation of these rules. An “in-today” sign must be placed by 8 a.m. on race day next to the stall of a horse that is scheduled to race on that day. For horses shipping in on race day, the sign must be placed upon the horse’s arrival.

(3) Any violation of rules regarding a claimed horse’s participation in the race in which the trainer’s horse is claimed.

(4) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms, and other areas which have been assigned to the trainer by the facility and maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.

(5) Ensuring that fire prevention rules are strictly observed in the assigned stable area.

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant. If the trainer or designee is not present or does not allow for the administration of furosemide to a horse to be run on furosemide, said horse will be placed on the steward’s list for a minimum of five days starting the day after the violation.

(7) The proper identity, custody, care, health, condition, and safety of horses in the trainer’s charge.

(8) Disclosure to the racing secretary of the true and entire ownership of each horse in the trainer’s care, custody, or control. Any change in ownership shall be reported immediately to, and approved by, the stewards and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary.

(9) Training all horses owned wholly or in part by the trainer which are participating at the race meeting.

(10) Registering with the racing secretary each horse in the trainer’s charge within 24 hours of the horse’s arrival on facility premises.

(11) Ensuring that, at the time of arrival at the facility, each horse in the trainer’s care is accompanied by a valid health certificate which shall be filed with the racing secretary.

(12) Having each horse in the trainer's care that is racing or stabled on facility premises tested for equine infectious anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary. The test must have been conducted within the previous 12 months and must be repeated upon expiration. The certificate must be attached to the foal certificate or otherwise accessible by the commission or racing association.

(13) Using the services of those veterinarians licensed by the commission to attend horses that are on facility premises.

(14) Properly recording the sex of the horses in the trainer's care with the horse identifier and the racing secretary and immediately reporting the alteration of the sex of a horse in the trainer's care to the horse identifier and the racing secretary.

(15) Promptly reporting to the racing secretary and the commission veterinarian any horse on which a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration. See Iowa Code subsections 99D.25(1) to 99D.25(3).

(16) Promptly reporting to the stewards and the commission veterinarian the serious illness of any horse in the trainer's charge.

(17) Promptly reporting the death of any horse in the trainer's care on facility premises to the stewards, owner, and the commission veterinarian and complying with Iowa Code subsection 99D.25(5) governing postmortem examination.

(18) Maintaining a knowledge of the medication record and status of all horses in the trainer's care.

(19) Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a horse in the trainer's custody, care, or control has received any prohibited drugs or medication.

(20) Representing an owner in making entries and scratches and in all other matters pertaining to racing.

(21) Eligibility of horses entered and weight or other allowance claimed.

(22) Ensuring the fitness of a horse to perform creditably at the distance entered.

(23) Ensuring that the trainer's horses are properly shod, bandaged, and equipped.

(24) Presenting the trainer's horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered. Any horse failing to report to the paddock will be placed on the steward's list for a minimum of five days starting the day after the violation.

(25) Personally attending to the trainer's horses in the paddock and supervising the saddling thereof, unless excused by the stewards.

(26) Instructing the jockey to give the jockey's best effort during a race and instructing the jockey that each horse shall be ridden to win.

(27) Witnessing the collection of a urine, blood, or hair sample from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so.

(28) Notifying horse owners upon the revocation or suspension of their trainer's license. A trainer whose license has been suspended for more than 30 days, whose license has expired or been revoked, or whose license application has been denied must inform the horse owners that, until the license is restored, the trainer can no longer be involved with the training, care, custody or control of their horses, nor receive any compensation from the owners for the training, care, custody or control of their horses. Upon application by the horse owner, the stewards may approve the transfer of such horse(s) to the care of another licensed trainer, and upon such approved transfer, such horse(s) may be entered to race. Upon transfer of such horse(s), the inactive trainer shall not be involved in any arrangements related to the care, custody or control of the horse(s) and shall not benefit financially or in any other way from the training of the horse(s).

(29) Ensuring that all individuals in their employ are properly licensed by the commission.

*b. Restrictions on wagering.* A trainer with a horse(s) entered in a race shall be allowed to wager only on that horse(s) or that horse(s) in combination with other horses.

*c. Assistant trainers.*

(1) Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards. The assistant trainer shall be licensed prior to acting in such capacity on behalf of the trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission and may include requirements set forth in 491—Chapter 6.

(3) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as are imposed on the licensed trainer, in which case the trainer shall be jointly responsible for the assistant trainer's compliance with the rules.

*d. Substitute trainers.*

(1) A trainer absent for more than five days from responsibility as a licensed trainer, or on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(2) A substitute trainer shall accept responsibility for the horses in writing and shall be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race.

**10.5(2) Jockey.**

*a. Responsibility.*

(1) A jockey shall give a best effort during a race, and each horse shall be ridden to win.

(2) A jockey shall not have a valet attendant except one provided and compensated by the facility.

(3) No person other than the licensed contract employer or a licensed jockey agent may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make the jockey's own riding engagements.

(4) A jockey shall have no more than one jockey agent.

(5) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(6) A jockey shall promptly report objections to the outrider(s) following the finish of the race.

*b. Jockey betting.* A jockey shall be allowed to wager only on a race in which the jockey is riding. A jockey shall be allowed to wager only if:

(1) The owner or trainer of the horse that the jockey is riding makes the wager for the jockey;

(2) The jockey only wagers on the jockey's own mount to win or finish first in combination with other horses in multiple-type wagers; and

(3) Records of such wagers are kept and available for presentation upon request by the stewards.

*c. Jockey's spouse.* A jockey shall not compete in any race against a horse that is trained or owned by the jockey's spouse.

*d. Jockey mount fees.* Rescinded IAB 5/6/09, effective 6/10/09.

*e. Entitlement.* Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by the contract holder. An interest in the winnings only (such as trainer's percent) shall not constitute ownership.

*f. Fee earned.* A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned when injury to the horse or rider is not involved and jockeys, of their own free will, take themselves off their mounts. Any conditions or considerations not covered by the above shall be at the discretion of the stewards.

*g. Multiple engagements.* If any owner or trainer engages two or more jockeys for the same race, the owner or trainer shall be required to pay each of the jockeys the appropriate fee whether the jockeys ride in the race or not.

*h. Dead heats.* Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

*i. Apprentices subject to jockey rules.* Unless excepted under these rules, apprentices are subject to all rules governing jockeys and racing.

*j. Conduct.*

(1) Clothing and appearance. A jockey shall wear the racing colors furnished by the owner of the horse the jockey is to ride, plus solid white riding pants, top boots, and a number on the right shoulder on the saddlecloth corresponding to the mount's number given as shown on the saddlecloth and in the daily program. The stewards, at their discretion, may allow a jockey to wear solid black riding pants during poor weather or track conditions. The Jockeys' Guild logo, the Permanently Disabled Jockeys Fund logo, or the jockey's name may be displayed on the pants. The size of the display of the jockey's name on the pants is limited to a maximum of 32 square inches on each thigh of the pants on the outer sides between the hip and the knee, and 10 square inches on the rear at the base of the spine. A jockey shall not wear advertising or promotional material of any kind on clothing during a race, unless the following criteria are met:

1. A maximum of 32 square inches on each thigh of the pants on the outer side between the hip and knee and 10 square inches on the rear of the pant at the waistline at the base of the spine.
2. A maximum of 24 square inches on boots and leggings on the outside of each nearest the top of the boot.
3. A maximum of 6 square inches on the front center of the neck area (on a turtleneck or other undergarment).
4. Such advertising or promotional material does not compete with, conflict with, or infringe upon any current sponsorship agreement to the racing association race or race meet.
5. The stewards, at their discretion, may disallow any advertising that is not in compliance with this rule, any other rules of racing, or any advertising the stewards deem to be inappropriate, indecent, in poor taste, or controversial.

(2) Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.

(3) Confined to jockey room. Jockeys engaged to ride a race shall report to the jockey room on the day of the race at the time designated by the facility officials. The jockeys shall then report their engagements and any overweight to the clerk of scales. Thereafter, they shall not leave the jockey room, except by permission of the stewards, until all of their riding engagements of the day have been fulfilled. Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be readmitted to the jockeys' quarters until after the entire racing program for that day has been completed, except upon permission of the stewards. Jockeys are not allowed to communicate with anyone but the trainer while in the room during the performance except with approval of the stewards. On these occasions, they shall be accompanied by a security guard.

(4) Whip prohibited. Jockeys may not use a whip on a two-year-old horse before April 1 of each year, nor shall a jockey or other person engage in excessive or indiscriminate whipping of any horse at any time.

(5) Spurs prohibited. Jockeys shall not use spurs.

(6) Possessing drugs or devices. Jockeys shall not have in their care, control, or custody any drugs, prohibited substances, or electrical or mechanical device that could affect a horse's racing performance.

*k. Jockey effort.* A jockey shall exert every effort to ride the horse to the finish in the best and fastest run of which the horse is capable. No jockey shall ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.

*l. Duty to fulfill engagements.* Jockeys shall fulfill their duly scheduled riding engagements, unless excused by the stewards. Jockeys shall not be forced to ride a horse they believe to be unsound or over a racing strip they believe to be unsafe. If the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, the jockey may be subject to disciplinary action. Jockeys shall be responsible to their agent for any engagements previously secured by the agent.

*m. Riding interference.*

(1) When the way is clear in a race, a horse may be ridden to any part of the course; but if any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, it is a foul.

(2) The offending horse may be disqualified if, in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding. When a horse causes interference under this rule, every horse in the same race entered by the same owner or trainer who benefited from the interference may be disqualified at the discretion of the stewards.

(3) If the stewards determine the foul was intentional, or due to careless riding, the jockey shall be held responsible.

(4) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it started. If a horse is ridden, drifts, or swerves out of its lane in such a manner that it interferes with, impedes, or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

*n. Jostling.* Jockeys shall not jostle another horse or jockey. Jockeys shall not strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.

*o. Partial fault/third-party interference.* If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.

*p. Careless riding.* A jockey shall not ride carelessly or willfully permit the mount to interfere with, intimidate, or impede any other horse in the race. A jockey shall not strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified; or the jockey may be fined, suspended, or otherwise disciplined; or other penalties may apply.

*q. Jockey weighed out.*

(1) Jockeys must be weighed for their assigned horse not more than 30 minutes before the time fixed for the race.

(2) A jockey's weight shall include the jockey's clothing, boots, saddle and its attachments. A safety vest shall be mandatory, shall weigh no more than two pounds, and shall be designed to provide shock-absorbing protection to the upper body.

(3) All other equipment shall be excluded from the weight.

*r. Overweight limited.* No jockey may weigh more than two pounds or, in the case of inclement weather, four pounds over the weight the horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of scales at least 60 minutes before the scheduled post time of the first race. However, a horse shall not carry more than seven pounds overweight, except in inclement weather when nine pounds shall be allowed. The overweight shall be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race.

(1) Weigh in. Upon completion of a race, jockeys shall ride promptly to the winner's circle and dismount. Jockeys riding the first four finishers, or at the discretion of the stewards a greater number, shall present themselves to the clerk of scales to be weighed in. If a jockey is prevented from riding the mount to the winner's circle because of accident or illness either to the jockey or the horse, the jockey may walk or be carried to the scales unless excused by the stewards.

(2) Unsaddling. Jockeys, upon completion of a race, must return to the unsaddling area and unsaddle their own horse, unless excused by the stewards.

(3) Removing horse's equipment. No person except the valet attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in, jockeys shall carry to the scales all pieces of equipment with which they weighed out. Thereafter they may hand the equipment to the valet attendant.

(4) Underweight. When any horse places first, second, or third in a race and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which the jockey was weighed out, the mount may be disqualified and all purse moneys forfeited.

(5) Overweight. If the jockey is overweight, the jockey is subject to fine, suspension, or both.

*s. Contracts.* Rescinded IAB 5/16/01, effective 6/20/01.

*t. Jockey fines and forfeitures.* Jockeys shall pay any fine or forfeiture from their own funds within 48 hours of the imposition of the fine or at a time deemed proper by the stewards. No other person shall pay jockey fines or forfeitures for the jockey.

*u. Competing claims.* Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute shall be resolved by the stewards.

*v. Jockey suspension.*

(1) Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception in racing shall begin on the third day after the ruling or at the stewards' discretion.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission, whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission, shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why the withdrawal should not be deemed frivolous.

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is under suspension for ten days or less for a careless riding infraction at the time the designated race is to be run.

1. Official rulings for riding suspensions of ten days or less shall state: "The term of this suspension shall not prohibit participation in designated races."

2. A listing of the designated races shall be posted in the jockey room and any other such location deemed appropriate by the stewards.

3. A suspended jockey must be named at time of entry to participate in any designated race.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. Each designated trial race for a stake shall be considered one race. A jockey who rides in more than one designated race shall be allowed to be named to ride other races on a card, and such race card shall not count as a suspended race day.

**10.5(3) Apprentice jockey.** Upon completion of licensing requirements, the stewards may issue an apprentice jockey certificate allowing the holder to claim this allowance only in overnight races.

*a.* An apprentice jockey shall ride with a five-pound weight allowance beginning with the first mount and for one full year from the date of the jockey's fifth winning mount.

*b.* If, after riding one full year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year or until the fortieth winner, whichever comes first. In no event shall a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

*c.* The steward may extend the weight allowance of an apprentice jockey when, in the discretion of the steward, the apprentice provides proof of incapacitation for a period of seven or more consecutive days. The allowance may be claimed for a period not to exceed the period such apprentice was unable to ride.

*d.* The apprentice jockey must have the apprentice certificate with the jockey at all times and must keep an updated record of the first 40 winners. Prior to riding, the jockey must submit the certificate to the clerk of scales, who will record the apprentice's winning mounts.

**10.5(4) Jockey agent.**

*a.* Responsibilities.

(1) A jockey agent shall not make or assist in making engagements for a jockey other than the jockeys the agent is licensed to represent.

(2) A jockey agent shall file written proof of all agencies and changes of agencies with the stewards.

(3) A jockey agent shall notify the stewards, in writing, prior to withdrawing from representation of a jockey and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

(4) All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made. Such records shall be subject to examination by the stewards at any time.

(5) No jockey agent shall represent more than two jockeys and one apprentice jockey at the same time except:

1. A jockey agent may represent three jockeys at a “mixed” meeting so long as no more than two of the jockeys ride the same breed. In addition, a jockey agent may represent one apprentice jockey who may ride either breed.

2. A jockey agent may represent three jockeys at a race meeting exclusive of thoroughbred racing.

(6) A jockey agent must honor a first call given to a trainer or the trainer’s assistant trainer.

b. Prohibited areas. A jockey agent is prohibited from entering the jockey room, winner’s circle, racing strip, paddock, or saddling enclosure during the hours of racing unless advance written permission has been granted from the stewards.

c. A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1456C, IAB 5/14/14, effective 6/18/14; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4954C, IAB 2/26/20, effective 4/1/20; ARC 5423C, IAB 2/10/21, effective 3/17/21; ARC 6895C, IAB 2/22/23, effective 3/29/23]

#### **491—10.6(99D) Conduct of races.**

**10.6(1)** Horses ineligible. Any horse ineligible to be entered for a race, or ineligible to start in any race, which competes in that race may be disqualified and the stewards may discipline the persons responsible for the horse competing in that race.

a. A horse is ineligible to enter a race when:

(1) The nominator has failed to identify the horse which is being entered for the first time, by name, color, sex, age, and the names of sire and dam as registered.

(2) A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate, altered microchip, or altered lip or digital tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any facility or regulatory agency.

(3) A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry or racing of some other horse under the name of the horse in question.

(4) A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person.

(5) A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person. In such cases, a presumption which may be rebutted is that the disqualified person and spouse constitute a single financial entity with respect to the horse.

(6) A horse is owned in whole or in part by an undisclosed person or interest.

(7) A horse has been nerved by surgical neurectomy.

(8) A horse has been trachea-tubed to artificially assist breathing.

(9) A horse has impaired eyesight in both eyes.

(10) A horse appears on the Iowa veterinarian’s list, notwithstanding a horse appearing on the veterinarian’s list as a “bleeder.” In addition, a horse appearing on any starter’s, stewards’, or paddock judge’s list, or the veterinarian’s list in another jurisdiction, is ineligible unless the horse is removed from the list by the day of the race and approved by the board of stewards to enter.

(11) A horse is barred from racing in any racing jurisdiction.

(12) A horse under four years of age has been injected with bisphosphonates. A horse four years of age or older may only be administered bisphosphonate if the bisphosphonate is Food and Drug Administration-approved for use in the horse and administered in accordance with the label

requirements and only for diagnosed cases of navicular disease. If bisphosphonate is administered as permitted by rule, the commission shall be notified within 24 hours of the administration. If bisphosphonate is detected in sampling or if a horse is administered bisphosphonate, the horse shall be placed on the veterinarian's list for no less than six months.

(13) A horse has had any intra-articular joint injection within the past six days. For the purpose of counting the number of days a horse is ineligible to run following an intra-articular injection, the day of injection is the first day. The detection of two or more corticosteroids constitutes a stacking violation.

(14) A horse has been administered thyroxine and thyroid modulators/hormones including, but not limited to, those containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof. This excludes a horse that has been individually prescribed thyroxine and thyroid modulators/hormones.

*b.* A horse is ineligible to start a race when:

(1) The horse is not stabled on the premises of the facility by the time designated by the stewards.

(2) The horse's breed registration certificate is not on file, physically or digitally, with the racing secretary, or horse identifier, except where the racing secretary has submitted the certificate to the breed registry for correction or transfer of ownership. The stewards may, in their discretion, waive the requirement provided the registration certificate is in the possession of another board of stewards, a copy of the registration certificate is on file with the racing secretary, and the horse is otherwise properly identified. For claiming races, if the claimed horse has been approved by the stewards to run without the registration certificate on file in the racing office, then the registration certificate must be provided to the racing office within seven business days for transfer to the new owner before claiming funds will be approved for transfer by the stewards.

(3) The horse is not fully identified by an official tattoo on the inside of the upper lip or digital tattoo or microchip.

(4) A horse is brought to the paddock and is not in the care of and saddled by a currently licensed trainer or assistant trainer unless excused by the stewards.

(5) No current negative Coggins test or current negative equine infectious anemia test certificate is attached to the horse's registration certificate or otherwise accessible by the commission or racing association.

(6) The stakes or entrance money for the horse has not been paid.

(7) The horse appears on the starter's list, stewards' list, paddock list, or veterinarian's list.

(8) The horse is a first-time starter not approved by the starter and does not have a minimum of two official workouts for quarter horses or a minimum of three official workouts for thoroughbreds.

(9) Within the past calendar year, the horse has started in a race that has not been reported in a nationally published monthly chartbook, unless, at least 48 hours prior to entry, the owner of the horse provides to the racing secretary performance records which show the place and date of the race, distance, weight carried, amount carried, and the horse's finishing position and time.

(10) In a stakes race, a horse has been transferred with its engagements, unless prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary.

(11) A horse is subject to a lien which has not been approved by the stewards and filed with the horsemen's bookkeeper.

(12) A horse is subject to a lease not filed with the stewards.

(13) A horse is not in sound racing condition.

(14) A horse has been blocked with alcohol or injected with any other foreign substance or drug to desensitize the nerves of the leg.

(15) A horse appears on the veterinarian's list as a "bleeder."

*c.* A horse is ineligible to start in a race when:

(1) A thoroughbred has shoes (racing plates) which have toe grabs with a height greater than two millimeters (0.07874 inches), bends, jars, caulks, stickers or any other traction device on the front hooves while racing or training on all racing surfaces.

(2) A quarter horse has front shoes which have toe grabs with a height greater than four millimeters (0.15748 inches), bends, jars, caulks, stickers or any other traction device worn on the front shoes.

**10.6(2) Entries.**

*a.* The facility shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or fax subsequently confirmed in writing by the owner, trainer, or licensed designee. When any entrant or nominator claims failure or error in the receipt by a facility of any entry or declaration, the entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration. Individuals who hold a jockey agent license, regardless of other licenses held, shall not be permitted to make entries after a time set by the stewards.

*b.* Upon the closing of entries the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.

*c.* Coupling. There will be no coupled entries in any race. In races, excluding stakes races, that overflow, trainers must declare preference of runners with identical ownership at time of entry. Same-owner, second-choice horses will be least preferred. A trainer, owner or licensed designee may not enter more than three horses in a race unless the race is split or divided.

*d.* Split or divided races.

(1) In the event a race is canceled or declared off, the facility may split any overnight race for which post positions have not been drawn.

(2) Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split race.

(3) A trainer shall be allowed to enter more than the maximum number of entries allowed under paragraph 10.6(2) "c" if the entries are declared at time of entry as "split entry only" and preference is given by the trainer for the trainer's first three entries.

(4) The racing secretary shall split an overnight race so that common ownership, identical ownership, or common trainer will divide as equally as possible between two or more races.

*e.* Entry weight. Owners, trainers, or any other duly authorized person who enters a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight shall not be changed except in the case of error and with the approval of the stewards. Weight allowances may be waived with the approval of the stewards.

*f.* Consecutive days. No horse shall be run twice within four consecutive calendar days. For the purpose of this rule, the day after the start shall count as the first day.

*g.* Foreign entries. For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "Pattern Race Book" published jointly by the Irish Turf Club, The Jockey Club of Great Britain, and the Société d'Encouragement.

*h.* Weight conversions. For the purpose of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:

1 sixteenth	= 100 meters
1 furlong	= 200 meters
1 mile	= 1600 meters

*i.* Name. The "name" of a horse means the name reflected on the certificate of registration, racing permit, or temporary racing permit issued by the breed registry. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the international code of suffixes and constitutes part of the horse's registered name. The registered names and suffixes, where applicable, shall be printed in the official program.

*j.* Bona fide entry. No person shall enter or attempt to enter a horse for a race unless that entry is a bona fide entry, made with the intention that the horse is to compete in the race for which the horse was entered.

*k.* Registration certificate to reflect correct ownership. Every breed registry foal certificate filed physically or digitally with the racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of the horse. The name of the owner that is printed on the official program for the horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate unless a stable name has been registered with the commission for the owner or ownership.

*l.* Naming/engaging of riders. Riders must be named at the time of entry. If, at the conclusion of the draw of a race, a trainer does not have a rider, all riders who are available shall be made known to the trainer at that time via telephone or in person by the stewards or their designee. A trainer who does not name a rider prior to the conclusion of the draw of a race, and reasonable attempts have been employed to contact the trainer with no response, shall have an available rider engaged at the facility placed on the horse, determination of which shall be drawn by lot. Riders properly engaged as a first or second call in a race must fulfill their engagements as required in paragraph 10.5(2) "l."

*m.* More than one race. No horse may be entered in more than one race, with the exception of stakes races, to be run on the same day on which pari-mutuel wagering is conducted.

*n.* Iowa-foaled horse. An Iowa-foaled horse shall not be entered in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are either physically or digitally stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

**10.6(3) Sweepstakes entries.**

*a.* *Entry and withdrawal.* The entry of a horse in a sweepstakes is a subscription to the sweepstakes. Before the time of closing, any entry or subscription may be altered or withdrawn.

*b.* *Entrance money.* Entrance money shall be paid by the nominator to a race. In the event of the death of the horse or a mistake made in the entry of an otherwise eligible horse, the nominator subscriber shall continue to be obligated for any stakes, and the entrance money shall not be returned.

*c.* *Quarter horse scratches and qualifiers unable to participate in finals.* If a horse should be scratched from the time trial finals, the horse's owner will not be eligible for a refund of the fees paid. If a horse that qualified for the final should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned and the owner will receive last place money. If more than one horse should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, then those purse moneys shall be added together and divided equally among the horse owners.

**10.6(4) Closing of entries.**

*a.* *Overnight entries.* Entries for overnight racing shall be closed at 10 a.m. by the racing secretary, unless a later closing is established by the racing secretary or unless approved by the stewards.

*b.* *Sweepstakes entries.* If an hour for closing is designated, entries and declarations for sweepstakes cannot be received thereafter. However, if a time for closing is not designated, entries and declarations may be mailed or faxed until midnight of the day of closing, if they are received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes that close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirements the secretary shall make. Closing for sweepstakes not during race meetings shall be at the office of the facility.

*c.* *Exception.* Nominations for stakes races shall not close nor shall any eligibility payment be due on a day in which the United States Postal Service is not operating.

**10.6(5) Prohibited entries.**

*a.* *Entry by disqualified person.* An entry made by a disqualified person or the entry of a disqualified horse shall be void. Any money paid for the entry shall be returned, if the disqualification

is disclosed at least 45 minutes before post time for the race. Otherwise, the entry money shall be paid to the winner.

*b. Limited partner entry prohibited.* No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.

*c. Altering entries prohibited.* No alteration shall be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.

*d. Limitation on overnight entries.* If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions shall be determined by lot conducted in public by the racing secretary.

*e. Stake race entry limit.* In a stake race, the number of horses which may compete shall be limited only by the number of horses nominated and entered. In any case, the facility's lawful race conditions shall govern.

*f. Stewards' denial of entry.* The stewards may, after notice to the entrant, subscriber, or nominator, deny entry of any horse to a race if the stewards determine the entry to be in violation of these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of pari-mutuel wagering or to public confidence in racing.

**10.6(6) Preferences and eligibles.**

*a. Also eligible.* A list of not more than eight names may be drawn from entries filed in excess of positions available in the race. These names shall be listed as "also eligible" to be used as entries if originally entered horses are withdrawn. Any owner, trainer, or authorized agent who has entered a horse listed as an "also eligible" and who does not wish to start shall file a scratch card with the secretary not later than the scratch time designated for that race. "Also eligibles" shall have preference to scratch.

*b. Preference system.* A system using dates or stars shall be used to determine preference for horses being entered in races. The system being used will be at the option of the racing secretary and approved by the stewards. A preference list will be kept current by the racing secretary and made available to horsemen upon request.

*c. Disputed decision.* When the decision of a race is in dispute, all horses involved in the dispute, with respect to the winner's credit or earnings, shall be liable to all weights or conditions attached to the winning of that race until a winner has been finally adjudged.

**10.6(7) Post positions.** Post positions shall be determined by the racing secretary publicly and by lot. Post positions shall be drawn from "also eligible" entries at scratch time. In all races, horses drawn into the race from the "also eligible" list shall take the outside post positions, except in straightaway quarter horse racing. In straightaway quarter horse racing, the post position of the scratched horse shall be assigned to the horse "drawing in." In the event there is more than one scratch, the post positions shall be assigned by lot.

**10.6(8) Scratch; declaring out.**

*a. Notification to the secretary.* No horse shall be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing secretary before the time set by the facility as scratch time. All scratches must be approved by the stewards.

*b. Declaration irrevocable.* Scratching or the declaration of a horse out of an engagement for a race is irrevocable.

*c. Limitation on scratches.* No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than seven betting interests, unless the stewards permit a lesser number. When the number of requests to scratch would, if granted, leave a field of fewer than seven, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race. Veterinarian scratches will be preferred and accepted without regard to the number of entries.

*d. Scratch time.* Unless otherwise set by the stewards, scratch time shall be:

- (1) Stakes races. Scratch time shall be at least 45 minutes before post time.
- (2) Other races. Scratch time shall be set by the stewards prior to the start of the meet.

**10.6(9) Workouts.**

*a. Thoroughbreds, when required.*

(1) No horse shall be allowed to start unless the horse has raced in an official race or has had an approved official timed workout satisfactory to the stewards, and adheres to the following for horses that are not first-time starters:

1. A horse that has not started for a period of 60 days or more shall have had an official workout satisfactory to the stewards prior to the day of the race in which the horse started, and the horse must have had an official workout within the previous 30 days.

2. A horse that has not started for a period of 180 days or more shall have had two official workouts, one of which must have occurred within the previous 30 days prior to the day of the race in which the horse started.

3. A horse that has not started for a period of 365 days or more shall fulfill the following requirements before being allowed to start:

- The horse must have had three official workouts.
- One of the three official workouts must have been from the starting gate going at least one-half mile, within 60 days of starting.

(2) No first-time starter shall be allowed to race unless it has had three official workouts, with one having occurred from the gate within the previous 60 days and is approved to start from the gate by the starter.

*b. Quarter horses, when required.*

(1) No horse shall be allowed to start unless the horse has raced in an official race or has had an approved official timed workout satisfactory to the stewards, and adheres to the following for horses that are not first-time starters:

1. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has had an official workout satisfactory to the stewards prior to the day of the race in which the horse started, and the horse must have had an official workout within the previous 60 days.

2. A horse that has not started for a period of 180 days or more shall have had two official workouts, one of which must have occurred within the previous 60 days.

3. A horse that has not started for a period of 365 days or more shall fulfill the following requirements before being allowed to start:

- The horse must have had two official workouts.
- One of the two official workouts must have been from the starting gate within 60 days of starting.

(2) No first-time starter shall be allowed to race unless it has had two official workouts, with one having occurred from the gate within the previous 60 days and is approved to start from the gate by the starter.

*c. Counting of days.* For the purpose of counting the number of days a horse is ineligible to start, the day after the workout shall be considered the first day.

*d. Identification.* The timer or the stewards may require licensees to identify a horse in their care being worked. The owner, trainer, or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

*e. Information dissemination.* If the stewards approve the timed workout so as to permit the horse to run in a race, they shall make it mandatory that this information be furnished to the public in advance of the race including, but not limited to, the following means:

- (1) Announcement over the facility's public address system;
- (2) Transmission on the facility's message board;
- (3) Posting in designated conspicuous places in the racing enclosure; and
- (4) Exhibit on track TV monitors at certain intervals if the track has closed circuit TV. If the workout is published prior to the race in either the Daily Racing Form or the track program, then it shall not be necessary to make the announcements set forth above.

*f. Restrictions.* No horse shall be taken onto the track for training or a workout except during hours designated by the facility.

**10.6(10) Equipment.**

*a. Whip and bridle limitations.* Unless permitted by the stewards, no whip or substitute for a whip shall exceed one pound or 30 inches and no bridle shall exceed two pounds.

*b. Equipment change.* No licensee may change the equipment used on a horse from that used in the horse's last race, unless with permission of the stewards. No licensee may add blinkers or cheek pieces to a horse's equipment or discontinue their use without the prior approval of the starter. First-time starters must race with or without blinkers or cheek pieces in accordance with the gate approval card issued by the starter. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

**10.6(11) Racing numbers and silks.**

*a. Number display.* Each horse in a race shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

*b. Field horses.* In a combined field of horses, each horse in the field shall carry a separate number.

*c. Racing silks.* Racing silks shall be turned in to the racing office or jockey room custodian upon arrival to the facility.

(1) All horses running in a race are required to race in an owner's silk or trainer's silk.

(2) In the case of a partnership, the horse shall run with a managing partner's silk or a trainer's silk if no partnership silk is available.

(3) Under special circumstances, a horse may be permitted by the stewards to run in a house silk.

**10.6(12) Valuation of purse money.** Rescinded IAB 5/16/01, effective 6/20/01.

**10.6(13) Dead heats.**

*a.* When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

*b.* In the event of a dead-heat finish for second place and thereafter, when an objection to the winner of the race is sustained, the horses in the dead heat shall be considered to have run a dead heat for first place.

*c.* If a prize includes a cup, plate, or other indivisible prize, owners shall draw lots for the prize in the presence of at least two stewards.

**10.6(14) and 10.6(15) Rescinded IAB 3/27/19, effective 5/1/19.**

**10.6(16) Equine infectious anemia (EIA) test.**

*a. Certificate required.* No horse shall be allowed to start or be stabled on the premises of the facility unless a valid negative Coggins test or other laboratory-approved negative EIA test certificate is on file with the racing secretary.

*b. Trainer responsibility.* In the event of claims, sales, or transfers, it shall be the responsibility of the new trainer to ascertain the validity of the certificate for the horse within 24 hours. If the certificate is either unavailable or invalid, the previous trainer shall be responsible for any reasonable cost associated with obtaining a negative EIA laboratory certificate.

*c. Positive test reports.* Whenever any owner or trainer is furnished a positive Coggins test or positive EIA test result, the horse shall be removed by the owner or trainer from facility premises or approved farms within 24 hours of actual notice to the owner or trainer of the infection.

**10.6(17) Race procedures.**

*a. Full weight.* Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand, unless excused by the stewards.

*b. Touching and dismounting prohibited.* After the horses enter the track, jockeys may not dismount or entrust their horse to the care of an attendant unless due to an accident occurring to the jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the hands of the jockey, the starter, the assistant starter, the commission veterinarian, an outrider on a lead pony, or persons approved by the stewards may touch the horse before the start of the race. If a horse throws its jockey on the way from the paddock to the post, the horse must be returned to the point where the jockey was thrown, where the horse shall be remounted and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

*c. Jockey injury.* If a jockey is seriously injured on the way to the post, the horse shall be returned to the paddock, a replacement jockey obtained, and both the injured jockey and the replacement jockey will be paid by the owner.

*d. Twelve-minute parade limit.* After entering the track, all horses shall proceed to the starting post in not more than 12 minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses shall be started without unnecessary delay. All horses must participate in the parade carrying their weight and equipment from the paddock to the starting post, and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse being led except with permission of the stewards.

*e. Striking a horse prohibited.* In assisting the start of a race, no person other than the jockey, starter, assistant starter, or veterinarian shall strike a horse or use any other means to assist the start.

*f. Loading of horses.* Horses will be loaded into the starting gate in numerical order or in any other fair and consistent manner determined by the starter and approved by the stewards.

*g. Delays prohibited.* No person shall obstruct or delay the movement of a horse to the starting post.

**10.6(18) Claiming races.**

*a. Eligibility.*

(1) Registered to race or open claim. No person may file a claim for any horse unless the person:

1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary's office or has started a horse at the meeting; or

2. Is a licensed authorized agent, authorized to claim for an owner eligible to claim; or

3. Has a valid open claim certificate. Any person not licensed as an owner, or a licensed authorized agent for the account of the same, or a licensed owner not having foal paper(s) registered with the racing secretary's office or who has not started a horse at the current meeting may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission; and when the open claim certificate is exercised, an owner's license will be issued; or

4. Is not a family member related within the second degree of affinity or consanguinity to the person or ownership entity who owns the horse. For the purpose of determining whether an ownership entity is excluded from claiming a horse or having a horse claimed, a family member within the second degree of affinity or consanguinity shall be defined as a parent, child, grandparent, grandchild, sibling, or in-law who owns or controls 5 percent or more of said entity.

(2) Number of claims.

1. An ownership entity (sole owner, partnership, limited liability partnership, racing stable, corporation, limited liability corporation, or owner/trainer acting as an owner) shall not claim more than one horse in a race. Any commonality of ownership prohibits more than one claim in a race by any of those entities.

2. An authorized agent or trainer acting on behalf of an ownership entity shall not submit more than two claims in a race with two separate ownership interests.

3. A trainer shall not receive more than two horses from any claiming race.

*b. Procedure for claiming.* To make a claim for a horse, an eligible person shall:

(1) Deposit to the person's account with the horsemen's bookkeeper the full claiming price and applicable taxes as established by the racing secretary's conditions.

(2) File in a locked claim box maintained for that purpose by the stewards the claim filled out completely in writing and with sufficient accuracy to identify the claim on forms provided by the facility at least ten minutes before the time of the race.

*c. Claim box.*

(1) The claim box shall be approved by the commission and kept locked until ten minutes prior to the start of the race, when it shall be presented to the stewards or their representatives for opening and publication of the claims.

(2) The claim box shall also include a time clock which automatically stamps the time on the claim envelope prior to its being dropped in the box.

(3) No official of a facility shall give any information as to the filing of claims therein until after the race has been run.

*d. Claim irrevocable.* After a claim has been filed in the claim box, it shall not be withdrawn.

*e. Multiple claims on single horses.* If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

*f. Successful claims; later races.*

(1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.

(2) Eligibility price. A horse claimed may not start in a race in which the claiming price is less than the amount for which it was claimed. After 30 days, a horse may start for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper or for starter allowances. No right, title, or interest for any claimed horse shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count, but the following calendar day shall be the first day.

(3) Racing elsewhere. A horse that was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) When a horse is claimed out of a claiming race, the horse's engagements are included.

*g. Transfer after claim.*

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary.

(2) No claimed horse shall be delivered by the original owner to the successful claimant until the claim is approved by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter; and said successful claimant becomes the owner of the horse unless the claim is voided by the stewards under the provisions of this paragraph. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards shall have no effect upon the claim.

(3) The stewards shall void the claim and return the horse to the original owner if:

1. The claimed horse suffers a fatality during the running of the race, dies, or is euthanized before leaving the track.

2. The commission veterinarian, during the veterinarian's observation of the horse coming off the track or upon its arrival to the test barn, determines the horse will be placed on the veterinarian's list as lame. The stewards shall not void the claim if, prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the veterinarian's list as lame. An election made under this rule shall be entered on the claim form.

3. The race is called off, canceled, or declared no contest.

(4) Other-jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(5) Determination of sex and age. The claimant, within 48 hours, shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. Horses that are spayed or gelded shall be

properly identified as such in the program. If the claimant finds that a mare is in fact spayed or that the status of a male horse is inaccurate as stated by the program, the claimant may return the horse for full refund of the claiming price.

(6) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(7) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant. The claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

(8) Obstructing the rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse, enter into any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

*h. Elimination of stable.* An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which eliminated or for 30 racing days, whichever is longer. With the permission of the stewards, stables eliminated by fire or other casualty may claim under this rule.

*i. Disallowance of claim.* The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim; or if an eligible claimant improperly obtains information or access to horses by being present in the paddock during the claiming race unless the claimant has a horse in that claiming race, as determined solely by the stewards. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys. To disallow a claim, it must be shown by clear and convincing evidence that there is a direct and substantial connection between the eligible claimant and the owner or owner's trainer of the horse to be claimed wherein the eligible claimant improperly gained information about the horse to be claimed and the information was otherwise unavailable to other licensed owners or ownership entities. The mere appearance of impropriety is not a basis for disallowing a claim.

*j. Protest of claim.* A protest to any claim must be filed with the stewards before noon of the day following the date of the race in which the horse was claimed. Nonracing days are excluded from this rule. Should the stewards void a claim for reasons other than failure to follow the procedure for claiming, when there are multiple claims on a singular horse, said claim shall not be voided until after the determination by lot.

*k. Waived claiming rule.* At the time of entry into claiming races, the owner, trainer, or any authorized agent may opt to declare a horse ineligible to be claimed provided:

(1) The horse has not been an official starter at any racetrack for a minimum of 120 days since the horse's last race as an official starter (at time of race);

(2) The horse's last race as an official starter was one in which the horse was eligible to be claimed;

(3) The horse is entered for a claiming price equal to or greater than the claiming price at which the horse last started as an official starter;

(4) Failure of declaration of ineligibility at time of entry may not be remedied; and

(5) Ineligibility to be claimed shall apply only to the horse's first start as an official starter following each such 120-day or longer layoff.

*l. Eligibility of in-foal filly or mare.* An in-foal filly or mare shall be eligible to be entered into a claiming race only if the following conditions are fulfilled:

(1) Full disclosure of such fact is on file with the racing secretary and such information is posted in the secretary's office;

(2) The stallion service certificate has been deposited with the racing secretary's office before the horse runs;

(3) All payments due for the service in question and for any live progeny resulting from that service are paid in full;

(4) The release of the stallion service certificate to the successful claimant at the time of claim is guaranteed; and

(5) The cutoff for racing is 150 days of gestation.

**10.6(19)** Quarter horse time trial races.

*a.* Except in cases where the starting gate physically restricts the number of horses starting, each time trial shall consist of no more than ten horses.

*b.* The time trials shall be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten fastest times shall qualify to participate in the finals. If the time trials are conducted on two days, the horses with the five fastest times on the first day and the horses with the five fastest times on the second day shall qualify to participate in the finals. When time trials are conducted on two days, the racing office should make every attempt to split owners with more than one entry into separate days so that the owner's horses have a chance at all ten qualifying positions.

*c.* If the facility's starting gate has fewer than ten stalls, then the maximum number of qualifiers will correspond to the maximum number of starting gate post positions.

*d.* If only 11 or 12 horses are entered to run in time trials from a gate with 12 or more stalls, the facility may choose to run finals only. If 11 or 12 horses participate in the finals, only the first 10 finishers will receive purse money.

*e.* In the time trials, horses shall qualify on the basis of time and order of finish. The times of the horses in the time trial will be determined to the limit of the timer. The only exception is when two or more horses have the same time in the same trial heat. Then the order of finish shall also determine the preference in the horses' qualifying for the finals. Should two or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position(s), then a draw by public lot shall be conducted as directed by the stewards. Under no circumstances should stewards or placing judges attempt to determine horses' qualifying times in separate trials beyond the limit of the timer by comparing or enlarging a photo finish picture.

*f.* Except in the case of disqualification, under no circumstances shall a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial.

*g.* Should a horse be disqualified for interference during the running of a time trial, it shall receive the time of the horse it is immediately placed behind plus one hundredth of a second, or the maximum accuracy of the electronic timing device. No adjustments will be made in the times recorded in the time trials to account for headwind, tailwind, and off track. In the case where a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse may be given no time plus one hundredth of a second, or the maximum accuracy of the electronic timing device.

*h.* Should a malfunction occur with an electronic timer on any time trial, finalists from that time trial will then be determined by official hand times operated by three official and disinterested persons. The average of the three hand times will be utilized for the winning time, unless one of the hand times is clearly incorrect. In such cases, the average of the two accurate hand times will be utilized for the winning time. The other horses in that race will be given times according to the order and margins of finish with the aid of the photo finish strip, if available.

*i.* When there is a malfunction of the timer during the time trials, but the timer operates correctly in other time trials, under no circumstances should the accurate electronic times be discarded and the average of the hand times used for all time trials. (The only exemption may be if the conditions of the stakes race so state, or state that, in the case of a malfunction of the timer in trials, finalists will be selected by order of finish in the trials.)

*j.* In the case where the accuracy of the electronic timer or the average of the hand times is questioned, the video of a time trial may be used to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. This method is accurate to approximately .03 seconds. Should the case arise where the timer malfunctions and there are no hand times, the stewards have the option to select qualifiers based on the video time.

*k.* Should there be a malfunction of the starting gate and one or more stall doors not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses in stalls with malfunctioning doors to be nonstarters. The stewards should have the option, however, to allow any horse whose stall door opened late but still ran a time fast enough to qualify to be declared a starter

for qualifying purposes. In the case where a horse breaks through the stall door or the stall door opens prior to the exact moment the starter dispatches the field, the horse must be declared a nonstarter and all entry fees refunded. In the case where one or more, but not all, stall doors open at the exact moment the starter dispatches the field, these horses should be considered starters for qualifying purposes, and placed according to their electronic times. If the electronic timer malfunctions in this instance, the average of the hand times, or, if not available, the video time, should be utilized for the horses that were declared starters.

*l.* There will be an also eligible list only in the case of a disqualification for a positive drug test report, ineligibility of the horse according to the conditions of the race, or a disqualification by the stewards for a rule violation. Should a horse be disqualified for a positive drug test report, ineligibility of the horse according to the conditions of the race, or a disqualification by the stewards for a rule violation, the next fastest qualifier shall assume the disqualified horse's position in the finals.

*m.* If a horse should be scratched from the time trials, the horse's owner will not be eligible for a refund of the fees paid, and that horse will not be allowed to enter the finals under any circumstances. If a horse that qualified for the finals is unable to enter due to racing soundness or is scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned, and the owner will receive, last place purse money. If more than one horse is scratched from the finals for any reason other than a positive drug test report or a rule violation, then the purse moneys shall be added together and divided equally among the owners.

[**ARC 7757B**, IAB 5/6/09, effective 6/10/09; **ARC 9987B**, IAB 2/8/12, effective 3/14/12; **ARC 1876C**, IAB 2/18/15, effective 3/25/15; **ARC 2468C**, IAB 3/30/16, effective 5/4/16; **ARC 2927C**, IAB 2/1/17, effective 3/8/17; **ARC 3608C**, IAB 1/31/18, effective 3/7/18; **ARC 4378C**, IAB 3/27/19, effective 5/1/19; **ARC 4954C**, IAB 2/26/20, effective 4/1/20; **ARC 5423C**, IAB 2/10/21, effective 3/17/21; **ARC 6169C**, IAB 2/9/22, effective 3/16/22]

#### **491—10.7(99D) Medication and administration, sample collection, chemists, and practicing veterinarian.**

##### **10.7(1) Medication and administration.**

*a.* No horse, while participating in a race, shall carry in its body any medication, drug, foreign substance, or metabolic derivative thereof, which is a narcotic or which could serve as a local anesthetic or tranquilizer or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby affecting its speed.

*b.* Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs, or prevent or delay testing procedures.

*c.* Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph 10.7(1) "a" or "b," in a saliva, urine, blood, or hair sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race shall be prima facie evidence that the horse was administered, with the intent that it would carry or that it did carry in its body while running in a race, a prohibited medication, drug, or foreign substance in violation of this rule.

*d.* Administration or possession of drugs.

(1) No person shall administer, cause to be administered, or participate or attempt to participate in any way in the administration of any medication, drug, foreign substance, or treatment by any route to a horse registered for racing on the day of the race prior to the race in which the horse is entered.

(2) No person except a veterinarian shall have in the person's possession any prescription drug. Prescriptions shall be written or dispensed or both only by duly licensed veterinarians in the context of a valid veterinarian-client-patient relationship and based upon a specific medical diagnosis. However, a person may possess a noninjectable prescription drug for animal use if:

1. The person actually possesses, within the racetrack enclosure, documentary evidence that a prescription has been issued to said person for such a prescription drug.

2. The prescription contains a specific dosage for the particular horse or horses to be treated by the prescription drug.

3. The horse or horses named in the prescription are then in said person's care within the racetrack enclosure.

(3) No veterinarian or any other person shall have in their possession or administer to any horse within any racetrack enclosure any chemical or biological substance which:

1. Has not been approved for use on equines by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq., and implementing regulations, without the prior written approval from a commission veterinarian, after consulting with the board of stewards.

2. Is on any of the schedules of controlled substances as prepared by the Attorney General of the United States pursuant to 21 U.S.C. Sections 811 and 812, without the prior written approval from a commission veterinarian after consultation with the board of stewards. The commission veterinarian shall not give such approval unless the person seeking the approval can produce evidence in recognized veterinary journals or by recognized equine experts that such chemical substance has a beneficial therapeutic use in horses.

(4) No veterinarian or any other person shall dispense, sell, or furnish any feed supplement, tonic, veterinary preparation, medication, or any other substance that can be administered or applied to a horse by any route, to any person within the premises of the facility unless it is labeled in conformance with this rule or is otherwise labeled as required by law. A substance does not comply with this rule if the label is missing, illegible, tampered with, or altered.

1. Labels for all substances must include the name of the substance dispensed; the name of the dispensing person; the name of the horse or horses for which the substance is dispensed; the purpose for which the substance is dispensed; the dispensing veterinarian's recommendations for withdrawal before racing, if applicable; and the name of the person to whom dispensed.

2. Labels for medications or other prescribed substances must include all items from subparagraph 10.7(1) "d"(1) and, in addition, the date the prescription was filled; the name of the trainer or owner of the horse for whom the product was dispensed; dose; dosage; route of administration; duration of treatment of the prescribed product; and expiration date.

(5) No person shall have in the person's possession or in areas under said person's responsibility on facility premises any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route unless it complies with the labeling requirements in 10.7(1) "d"(4).

(6) No person shall possess, use, or distribute a compounded medication within the premises of the facility if there is a Food and Drug Administration-approved equivalent of that substance available for purchase unless approved by the commission veterinarian. Veterinary drugs shall be compounded in accordance with all applicable state and federal laws. Compounded medication shall be dispensed only by prescription issued by a licensed veterinarian to meet the medical needs of a specific horse and for use only in that specific horse. All compound medications must be labeled as required by law.

(7) Any drug or medication for horses which is used or kept on facility premises and which requires a prescription must be prescribed in compliance with applicable state law and regulations by a veterinarian who is duly licensed by the commission, the Iowa veterinary board, or the state in which the horse was located at the time of the examination, diagnosis and prescription.

*e.* Any person found to have administered, or caused, participated in, or attempted to participate in any way in the administration of a medication, drug, or foreign substance that caused or could have caused a violation of this rule shall be subject to disciplinary action.

*f.* The owner, trainer, groom, or any other person having charge, custody, or care of the horse is obligated to protect the horse properly and guard it against the administration or attempted administration of a substance in violation of this rule. If the stewards find that any person has failed to show proper protection and guarding of the horse, or if the stewards find that any owner, lessee, or trainer is guilty of negligence, they shall impose discipline and take other action they deem proper under any of the rules including referral to the commission.

*g.* In order for a horse to be placed on the bleeder list in Iowa through reciprocity, that horse must be certified as a bleeder in another state or jurisdiction. A certified bleeder is a horse that has raced with furosemide in another state or jurisdiction in compliance with the laws governing furosemide in that state or jurisdiction.

*h.* The possession or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the commission is forbidden:

- (1) Erythropoietin;
- (2) Darbepoetin;
- (3) Oxyglobin®; and
- (4) Hemopure®.

*i.* The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

- (1) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;
- (2) The use of extracorporeal shock wave therapy or radial pulse wave therapy machines shall be limited to veterinarians licensed to practice by the commission;
- (3) Any extracorporeal shock wave therapy or radial pulse wave therapy machines on the association grounds must be registered with and approved by the commission or its designee before use;
- (4) All extracorporeal shock wave therapy or radial pulse wave therapy treatments must be reported to the official veterinarian on the prescribed form not later than the time prescribed by the official veterinarian.

*j.* The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or designee.

*k.* Non-steroidal anti-inflammatory drugs (NSAIDs).

(1) The use of one of three approved NSAIDs shall be permitted under the following conditions:

1. The level does not exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

- Phenylbutazone (or its metabolite oxyphenylbutazone) – 2 micrograms per milliliter;
- Flunixin – 20 nanograms per milliliter;
- Ketoprofen – 2 nanograms per milliliter.

2. The NSAIDs listed in numbered paragraph “1” or any other NSAIDs are prohibited from being administered within the 24 hours before post time for the race in which the horse is entered.

3. The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 0.3 micrograms per milliliter, flunixin in a concentration below 3 nanograms per milliliter, or ketoprofen in a concentration below 1 nanogram per milliliter of serum or plasma, or the presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(2) Any horse to which an NSAID has been administered shall be subject to having a blood sample(s), urine sample(s) or both taken at the direction of the official veterinarian to determine the quantitative NSAID level(s) or the presence of other drugs which may be present in the blood or urine sample(s).

**10.7(2) Sample collection.**

*a.* Under the supervision of the commission veterinarian, urine, blood, hair, and other specimens shall be taken and tested from any horse that the stewards, commission veterinarian, or the commission’s representatives may designate. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owners or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

*b.* A facility shall have a detention barn under the supervision of the commission veterinarian for the purpose of collecting body fluid samples for any tests required by the commission. The building, location, arrangement, furnishings, and facilities including refrigeration and hot and cold running water must be approved by the commission. A security guard, approved by the commission, must be in attendance at each access to the detention barn during the hours designated by the commission.

c. No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of horses pending the obtaining of body fluid samples.

d. During the taking of samples from a horse, the owner, responsible trainer, or a representative designated by the owner or trainer may be present and witness the taking of the sample and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the owner, trainer, or representative of any objections to the source and documentation of the sample.

e. The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or commission representative may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a horse in a race, which may be found in barns or elsewhere on facility premises or in the possession of any person connected with racing, and the same shall be delivered to the official chemist for analysis.

f. Nothing in these rules shall be construed to prevent:

(1) Any horse in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission or commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

g. Before leaving the racing surface, the trainer shall ascertain the testing status of the horse under the trainer's care from the commission veterinarian or designated detention barn representative.

**10.7(3) Chemists.**

a. Tests are to be under the supervision of the commission, which shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a foreign substance, medication, drug or metabolic derivative thereof is present.

b. All body fluid samples taken by or under direction of the commission veterinarian or commission representative shall be delivered to the laboratory of the official chemist for analysis.

c. The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

d. The commission chemist shall conduct individual tests on each sample, screening them for prohibited substances, and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the commission.

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of a test suspicious or positive for prohibited substances, the test shall be reconfirmed and the remaining portion, if available, of the sample shall be preserved and protected for one year following close of meet.

f. The commission chemist shall submit to the commission a written report as to each sample tested, indicating by sample tag identification number, whether the sample was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the administrator or commission representative, with the exception of notifying the state stewards of all positive tests.

g. In the event the commission chemist should find a sample suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

h. In reporting to the state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

i. No action shall be taken by the state steward until an official report signed by the chemist properly identifying the medication, drug, or other substance as well as the horse from which the sample was taken has been received.

*j.* The cost of the testing and analysis shall be paid by the commission to the official chemist. The commission shall then be reimbursed by each facility on a per-sample basis so that each facility shall bear only its proportion of the total cost of testing and analysis. The commission may first receive payment from funds provided in Iowa Code chapter 99D, if available.

**10.7(4) Practicing veterinarian.**

*a.* Prohibited acts.

(1) Ownership. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any racing animal racing during the meeting.

(2) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) Prohibition of furnishing injectable materials. No veterinarian shall within the facility premises furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic, or prohibited substance to any other person unless with written permission of the stewards.

*b.* The use of other than single-use disposable syringes and infusion tubes on facility premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove the needle and syringe from the facility premises.

*c.* Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all procedures, medications and other substances which the veterinarian prescribed, administered, or dispensed for racing animals registered at the current race meeting as provided in Iowa Code section 99D.25(10). Reports shall be submitted not later than noon the day following the treatments' being reported. Reports shall include the racing animal, trainer, procedure, medication or other substance, dosage or quantity, route of administration, date and time administered, dispensed, or prescribed. Reports shall be signed by the practicing veterinarian.

*d.* Practicing veterinarians shall not have contact with an entered horse within 24 hours before the scheduled post time of the race in which the horse is scheduled to compete unless approved by the state veterinarian except in the case of emergency. In case of an emergency, the state veterinarian must be notified prior to entering the stall. A documented attempt to contact the state veterinarian prior to entering the stall shall comply with the notification requirements pursuant to this rule. Any unauthorized contact may result in the horse's being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the stewards.

*e.* Each veterinarian shall report immediately to the commission veterinarian any illness presenting unusual or unknown symptoms in a racing animal entrusted into the veterinarian's care.

*f.* Practicing veterinarians may have employees licensed as veterinary assistants working under their direct supervision. Activities of these employees shall not include direct treatment or diagnosis of any animal. The practicing veterinarian must be present if a veterinary assistant is to have access to injection devices or injectables. The practicing veterinarian shall assume all responsibility for a veterinary assistant.

*g.* Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the facility must be performed by a licensed veterinarian or a licensed veterinary assistant.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 2468C, IAB 3/30/16, effective 5/4/16; ARC 3446C, IAB 11/8/17, effective 12/13/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 4194C, IAB 12/19/18, effective 1/23/19; ARC 4378C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapter 99D.

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◇ Two or more ARCs

- <sup>1</sup> Effective date (1/4/89) of 10.4(14), 10.4(19)“b” and 10.6 delayed by the Administrative Rules Review Committee until January 9, 1989, at its December 13, 1988, meeting; effective date of January 4, 1989, delayed seventy days by this Committee at its January 5, 1989, meeting. Effective date delay lifted by the Committee at its February 13, 1989, meeting.
- <sup>2</sup> Effective date of 10.6(2)“g”(3) second paragraph delayed until adjournment of the 1997 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 8, 1996.
- <sup>3</sup> June 19, 2013, effective date of 10.4(4)“a”(6) and 10.4(4)“d”(3)“1” [Items 17 and 18 of ARC 0734C, respectively] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 2013.

CHAPTER 11  
GAMBLING GAMES

**491—11.1(99F) Definitions.**

“*Administrator*” means the administrator of the racing and gaming commission or the administrator’s designee.

“*Coin*” means tokens, nickels, and quarters of legal tender.

“*Commission*” means the racing and gaming commission.

“*Currency*” means any coin or paper money of legal tender and paper forms of cashless wagering.

“*Discount rate*” means either the current prime rate as published in the Wall Street Journal or a blended rate computed by obtaining quotes for the purchase of qualified investments at least three times per month.

“*Distributor’s license*” means a license issued by the administrator to any entity that sells, leases, or otherwise distributes gambling games or implements of gambling to any entity licensed to conduct gambling games pursuant to Iowa Code chapter 99F.

“*Facility*” means an entity licensed by the commission to conduct gaming operations in Iowa.

“*Facility grounds*” means all real property utilized by the facility in the conduct of its gaming activity, including the grandstand, concession stands, offices, parking lots, and any other areas under the jurisdiction of the commission.

“*Gambling game*” means any game of chance approved by the commission for wagering, including, but not limited to, gambling games authorized by this chapter.

“*Government sponsored enterprise debt instrument*” means a negotiable, senior, noncallable debt obligation issued by an agency of the United States or an entity sponsored by an agency of the United States that on the date of funding possesses an issuer credit rating equivalent to the highest investment grade rating given by Standard & Poor’s or Moody’s Investment Services.

“*Implement of gambling*” means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a gambling game; facilitate the operation of an electronic wagering account as defined by rule 491—12.1(99F); or be integral to the conduct of a commission-authorized gambling game.

“*Independent financial institution*” means a bank approved to do business in the state of Iowa or an insurance company admitted to transact insurance in the state of Iowa with an A.M. Best insurance rating of “A” or other equivalent rating.

“*Manufacturer’s license*” means a license issued by the administrator to any entity that assembles, fabricates, produces, or otherwise constructs a gambling game or implement of gambling used in the conduct of gambling games pursuant to Iowa Code chapter 99F.

“*Present value*” means the current value of a future payment or series of payments, discounted using the discount rate.

“*Qualified investment*” means an Iowa state issued debt instrument, a United States Treasury debt instrument or a government sponsored enterprise debt obligation.

“*Reserve*” means an account with an independent financial institution or brokerage firm consisting of cash, qualified investments, or other secure funding method approved by the administrator used to satisfy periodic payments of prizes.

“*Slot machine*” means a mechanical or electronic gambling game device into which a player may deposit currency or forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

“*Storage media*” means EPROMs, ROMs, flash-ROMs, DVDs, CD-ROMs, compact flashes, hard drives and any other types of program storage device.

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**491—11.2(99F) Conduct of all gambling games.**

**11.2(1) Commission policy.** It is the policy of the commission to require that all facilities conduct gambling games in a manner suitable to protect the public health, safety, morals, good order, and general

welfare of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the facility. Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including license revocation.

**11.2(2) *Activities prohibited.*** A facility is expressly prohibited from the following activities:

- a.* Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.
- b.* Permitting persons who are visibly intoxicated to participate in gaming activity.
- c.* Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility including payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.
- d.* Possessing, or permitting to remain in or upon any facility grounds, any associated gambling equipment which may have in any manner been marked, tampered with, or otherwise placed in a condition or operated in a manner which might affect the game and its payouts.
- e.* Permitting, if the facility was aware of, or should have been aware of, any cheating.
- f.* Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any cheating device whatsoever; or conducting, carrying on, operating, or dealing any cheating or thieving game or device on the grounds.
- g.* Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any gambling device which tends to alter the normal random selection of criteria which determines the results of the game or deceives the public in any way.
- h.* Failing to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or acts as a detriment to the gaming industry.
- i.* Denying a commissioner or commission representative, upon proper and lawful demand, information or access to inspect any portion of the gaming operation.

**11.2(3) *Gambling aids.*** No person shall use, or possess with the intent to use, any calculator, computer, or other electronic, electrical, or mechanical device that:

- a.* Assists in projecting the outcome of a game.
- b.* Keeps track of cards that have been dealt.
- c.* Keeps track of changing probabilities.

**11.2(4) *Wagers.*** Wagers may only be made:

- a.* By a person present at a facility.
- b.* In the form of chips, coins, or other cashless wagering.
- c.* By persons 21 years of age or older.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—11.3(99F) *Gambling games approved by the commission.*** The commission may approve a gambling game by administrative rule, resolution, or motion.

**491—11.4(99F) *Approval for distribution, operation, or movement of gambling games and implements of gambling.***

**11.4(1) *Approval.*** Prior to distribution, a distributor shall request that the administrator inspect, investigate, and approve a gambling game or implement of gambling for compliance with commission rules and the standards required by a commission-designated independent testing facility. The distributor, at its own expense, must provide the administrator and independent testing facility with information and product sufficient to determine the integrity and security of the product, including independent testing conducted by a designated testing facility. The commission shall designate up to two independent testing facilities for the purpose of certifying electronic gambling games or implements of gambling.

**11.4(2) *Trial period.*** Prior to or after commission approval and after completing a review of a proposed gambling game, the administrator may require a trial period of up to 180 days to test the

gambling game in a facility. During the trial period, minor changes in the operation or design of the gambling game may be made with prior approval of the administrator. During the trial period, a gambling game distributor shall not be entitled to receive revenue of any kind from the operation of that gambling game.

**11.4(3) *Gambling game submissions.*** Prior to conducting a commission-authorized gambling game or for a trial period, a facility shall submit proposals for game rules, procedures, wagers, shuffling procedures, dealing procedures, cutting procedures, and payout odds. The gambling game submission, or requests for modification to an approved submission, shall be in writing and approved by the administrator or a commission representative prior to implementation.

**11.4(4) *Public notice.*** The public shall have access to the rules of play, payout schedules, and permitted wagering amounts. Signage shall be conspicuously posted on the gaming floor to direct patrons to the gaming floor area where this information can be viewed. All participants in all licensed gambling games are required to know and follow the rules of play. No forms of cheating shall be permitted.

**11.4(5) *Operation.*** Each gambling game shall operate and play in accordance with the representation made to the commission and the public at all times. The administrator or commission representative may order the withdrawal of any gambling game suspected of malfunction or misrepresentation, until all deficiencies are corrected. The administrator or commission representative may require additional testing by an independent testing facility at the expense of the licensee or distributor for the purpose of complying with this subrule.

**11.4(6) *Distribution, movement and disposal.***

*a.* Except as otherwise authorized by the administrator, written notice, submitted by facsimile or electronic mail, shall be filed with the commission when a gambling game or implement of gambling is shipped, moved or disposed of. The written notice shall be provided as follows:

(1) At least five calendar days prior to arrival of a gambling game or implement of gambling at a licensed facility, the licensed distributor shall provide notice.

(2) At least one day before a gambling game is removed from or disposed of by a licensed facility, the licensed facility or the owner shall provide notice. All methods of disposal for gambling games or implements of gambling are subject to administrator approval.

*b.* The administrator may approve licensee transfers of gambling games or implements of gambling among subsidiaries of the licensee's parent company.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 1456C, IAB 5/14/14, effective 6/18/14]

#### **491—11.5(99F) Gambling games authorized.**

**11.5(1)** Craps, roulette, twenty-one (blackjack), baccarat, big six and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

**11.5(2)** Slot machines, video poker, and other video games of chance, both progressive and nonprogressive, shall be allowed as slot machine games, subject to the administrator's approval of individual slot machine prototypes and game variations. For racetrack enclosures without a table games license, video machines which simulate table games of chance shall not be allowed.

**11.5(3)** The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule 491—11.4(99F). Features utilizing a controller or a system linked to gambling games that do not require direct monetary consideration and are not otherwise integrated within a slot machine game theme may be allowed as bonus features. Payouts from these bonus features may be included in winnings for the calculation of wagering tax adjusted gross receipts when the following conditions are met:

*a.* The only allowable nonmonetary consideration to be expended by a participant shall be active participation in a gambling game with a bonus feature or use of a player's club card, or both.

*b.* The actual bonus payout deductible in any month from all qualified system bonuses requiring no additional direct monetary consideration shall be:

(1) No more than 2 percent of the coin-in for all slot machines linked to any system bonuses for that month if slot machines linked to system bonuses exceed 20 percent of the total number of slot machines; or

(2) No more than 3 percent of the coin-in for all slot machines linked to any system bonuses for that month if slot machines linked to system bonuses are less than or equal to 20 percent of the total number of slot machines; or

(3) No more than 3 percent of the amount wagered on the qualifying bets for all table games linked to any system bonus for that month.

c. The probability of winning a system bonus award shall be the same for all persons participating in the bonus feature.

**11.5(4)** Gambling games of chance involving prizes awarded to participants through promotional activities at a facility may be conducted by the licensee providing the following:

a. Rules shall be made available to participants for review prior to registering. Rules shall include, at a minimum, all conditions registered players must meet to qualify to enter or participate in the event, available prizes or awards, and distribution of prizes or awards based on specific outcomes.

b. All gambling games are conducted in a fair and honest manner, and all rules are followed. Changes to rules shall not be made after participants have registered.

c. Results shall be made available for the registered players to review at the same location at which or in the same manner in which players registered. Results shall include, at a minimum, name of the event, date of the event, total number of entries, total prize pool, and amount paid for each winning category.

d. No entry fees shall be permitted.

e. All employees of the facility shall be prohibited from participation.

f. Such games shall be limited to participants 21 years of age or older.

g. There is compliance with all other federal, state and local laws and rules outside of the commission's jurisdiction.

h. Outcomes for gambling games shall be determined on the designated gaming floor, approved pursuant to 491—subrule 5.4(17), and outcomes shall be immediately or simultaneously displayed by a device or devices on the designated gaming floor.

i. In determining adjusted gross receipts pursuant to Iowa Code section 99F.11, the facility may consider all nonmonetary consideration expended by a participant and the nonmonetary consideration shall at least equal the value of prizes awarded.

**11.5(5)** Mechanical devices employing kickers or plates to direct coins, tokens or chips to fall over an edge into a payout hopper may be authorized as gambling games, subject to the following conditions:

a. All devices are subject to the requirements of rule 491—11.4(99F).

b. Devices shall accept no more than one coin, token or chip per play, unless otherwise authorized by the administrator.

c. Tokens or chips used in devices shall have a value defined by the facility. Each assigned value must be displayed on the device. Values are subject to approval by the administrator.

d. Merchandise, coins, tokens, chips or other legal tender may be added to the device at the discretion of the facility:

(1) Anything of value added to a device must be in accordance with the approval of the device under the requirements of rule 491—11.4(99F); and

(2) Anything of value added to a device shall be documented, and documentation shall be retained in accordance with the retention requirements of 491—subrule 5.4(14).

e. Any coins, tokens or chips collected by the facility or not returned to individuals wagering on a device shall be included as gross receipts for the calculation of wagering tax on adjusted gross receipts:

(1) When a device is removed from play, coins, tokens, chips or other legal tender that were added to the device may be used to offset gross receipts for the calculation of wagering tax on adjusted gross receipts; and

(2) Merchandise or other items of value added to a device shall not be considered in the calculation of wagering tax on adjusted gross receipts.

*f.* Merchandise, coins, tokens, chips or other legal tender shall not be removed from a device while it remains in operation, except as winnings to an individual from a wager, or as the result of internal mechanisms of the device for collecting revenue, approved in accordance with rule 491—11.4(99F).

*g.* Anything of value in the machine shall not be tampered with or adjusted while a device remains in operation, except as required to return a malfunctioning device to operation.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4954C, IAB 2/26/20, effective 4/1/20; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22]

#### **491—11.6(99F) Gambling game-based tournaments.**

**11.6(1) *Proposals.*** Proposals for terms, game rules, entry fees, prizes, dates, and procedures must be submitted in writing and approved by a commission representative before a facility conducts any tournament. Any changes to approved tournaments must be submitted to the commission representative for review and approval prior to being implemented. The written proposal or change shall be submitted to a commission representative at least 14 days in advance of the planned activity. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

**11.6(2) *Limits.*** Tournaments must be based on gambling games authorized by the commission. Entry fees, less prizes paid, are subject to the wagering tax pursuant to Iowa Code section 99F.11. In determining adjusted gross receipts, to the extent that prizes paid out exceed entry fees received, the facility shall be deemed to have paid the fees for the participants.

**11.6(3) *Tournament chips.*** Tournament chips used as wagers in table game tournament proposals approved pursuant to this rule shall be imprinted with a number representing the value of the chip or shall be assigned a value. The facility shall provide that:

*a.* The assigned value of tournament chips be conspicuously displayed in the tournament area.

*b.* Internal controls which account for all tournament chips and include reconciliation, handling and variance procedures are approved by a commission representative.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9987B, IAB 2/8/12, effective 3/14/12]

#### **491—11.7(99F) Table game requirements.**

**11.7(1)** Devices that determine or affect the outcome of wagers or are used in the collection of wagers on table games are subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3). Additionally, software used in the conduct of table games is subject to the following requirements:

*a.* Removable storage media shall be sealed with tamper-evident tape by a commission representative prior to implementation.

*b.* Random number generators shall conform to the requirements of subrule 11.10(2); however, outcomes generated from the random number generator results may be dependent on previous outcomes in the following circumstances:

(1) When simulating live card games where cards used are not reused until the next hand is dealt, or until the multiplayer electronic device performs a shuffle of the simulated cards.

(2) When the random number generator is used in the award of a bonus outcome approved in accordance with subrule 11.5(3). Bonus outcomes that are statistically dependent must employ technology solutions to ensure that continuation from the last outcome is maintained in the event of any malfunction.

#### **11.7(2) Wagers.**

*a.* All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout or by making a cashless wager using an approved wagering device.

*b.* Information pertaining to the minimum and maximum allowed at the table shall be posted on the game.

*c.* A facility may impose an aggregate payout limit on a per round basis for approved table game odds payouts that are greater than 50 to 1. If imposed, aggregate limits shall be at least the highest available award at the posted minimum bet, or \$25,000, whichever amount is greater, and the amount shall be posted on the game. When applying the aggregate payout limit to multiple players' wins,

facilities shall calculate each player's win as a pro rata share of the aggregate payout limit. Alternate aggregate or individual player payout limits may be established, as determined by the administrator.

*d.* Any other fee collected to participate in a table game shall be subject to the wagering tax pursuant to Iowa Code section 99F.11.

**11.7(3) Craps.**

*a.* Wagers must be made before the dice are thrown. "Call bets," or the calling out of bets between the time the dice leave the shooter's hand and the time the dice come to rest, not accompanied by the placement of gaming chips, are not allowed. A wager made on any bet may be removed or reduced at any time prior to a roll that decides the outcome of such wager unless the wager is a "Pass" or "Come" bet and a point has been established with respect to such bet or the wager is a proposition bet contingent on multiple rolls.

*b.* The shooter shall make a "Pass" or "Don't Pass" bet and shall handle the two selected dice with one hand before throwing the dice in a simultaneous manner.

*c.* Each die used shall be transparent.

**11.7(4) Twenty-one.**

*a.* Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager on the insurance line, a wager to double down, or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted. A facility or licensee shall not permit any player to engage in conduct that violates this paragraph.

*b.* At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in a prescribed order and in such a way that they can be readily arranged to indicate each player's hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to the far right and moving counterclockwise around the table. The dealer's hand will be the last hand collected. The cards will then be placed on top of the discard pile. No player or spectator shall remove or alter any cards used to game at twenty-one or be permitted to do so by a casino employee.

*c.* Each player at the table shall be responsible for correctly computing the point count of the player's hand. No player shall rely on the point counts announced by the dealer without checking the accuracy of such announcement.

**11.7(5) Roulette.**

*a.* No person at a roulette table shall be issued or permitted to game with nonvalue gaming chips that are identical in color and design to value gaming chips or to nonvalue gaming chips being used by another person at that same table.

*b.* Each player shall be responsible for the correct positioning of the player's wager on the roulette layout, regardless of whether the player is assisted by the dealer. Each player must ensure that any instructions the player gives to the dealer regarding the placement of the player's wager are correctly carried out.

*c.* Each wager shall be settled strictly in accordance with its position on the layout when the ball falls to rest in a compartment of the wheel.

**11.7(6) Big six.**

*a.* Wagers must be made before the spin of the wheel.

*b.* Each player shall be responsible for the correct positioning of the player's wager on the layout regardless of whether that player is assisted by the dealer.

*c.* The wheel may be spun in either direction, but must complete at least three revolutions to be considered a valid spin.

*d.* Each wager shall be settled strictly in accordance with its position on the layout when the wheel stops with the winning indicator in a compartment of the wheel. In accordance with subrule 11.4(3), the rules shall include procedures addressing wheel stops that land between two compartments of the wheel. These procedures shall be posted at the game.

**11.7(7) Poker.**

*a.* When a facility conducts poker with an imprest dealer gaming chip bank, the rules in 491—Chapter 12 for closing and distributing or removing gaming chips to or from gaming tables do not apply. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer gaming chip banks must be submitted in writing and approved by a commission representative prior to use and must include, but not be limited to, controls to regularly monitor, investigate, and report table bank variances.

*b.* All games shall be played according to table stakes game rules as follows:

- (1) Only gaming chips or coins on the table at the start of a deal shall be in play for that pot.
- (2) Concealed gaming chips or coins shall not play.
- (3) A player with gaming chips may add additional gaming chips between deals, provided that the player complies with any minimum buy-in requirement.

(4) A player is never obliged to drop out of contention because of insufficient gaming chips to call the full amount of a bet, but may call for the amount of gaming chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

*c.* Each player in a poker game is required to act only in the player's own best interest. The facility has the responsibility of ensuring that any behavior designed to assist one player over another is prohibited. The facility may prohibit any two players from playing in the same game.

*d.* Poker games where winning wagers are paid by the facility according to specific payout odds or pay tables are permitted.

*e.* The facility shall comply with and receive approval pursuant to subrule 11.4(3) for each type of poker game offered.

*f.* The facility may elect to offer a jackpot award generated from pot contributions at a table or group of tables for predesignated high-value poker hands, subject to the following requirements:

(1) Approval of the jackpot award rules must be obtained from a commission representative prior to play.

(2) Jackpot award rules and jackpot award amounts shall be posted in a conspicuous location within the poker room. Jackpot award amounts shall be updated no less than once per day.

(3) The facility shall divide pot contributions for any single qualifying award circumstance or event into no more than three jackpot award pools.

(4) The jackpot award pool containing the highest monetary value amount shall be the amount posted in the poker room and awarded to a qualifying player or players.

(5) If additional jackpot award pools are in use, the award pool containing the highest monetary value shall be used to seed the primary jackpot award pool.

(6) All moneys collected as pot contributions to a jackpot award payout shall be distributed in their entirety to the players; no facility shall charge an administration fee for distribution of a jackpot award.

**11.7(8) Baccarat.** Before the first card is dealt for each round of play, each player is permitted to make a wager on the Banker's Hand, Player's Hand, Tie Bet, and any proposition bet if offered. All wagers shall be made by placing gaming chips on the appropriate areas of the layout. Once the first card has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager.

**11.7(9) Preverified cards.** Cards that are verified prior to arrival at the facility may be approved by the administrator for use in table games authorized by this rule. Preverified cards may be shuffled or sequenced according to the licensee's specifications. Each manufacturer of preverified cards shall request approval of its cards, pursuant to subrule 11.4(1), and is subject to the following additional requirements:

*a.* Each device used to verify or automate the randomization of the cards before they are shipped to a licensee shall be certified by a commission-designated independent testing facility.

*b.* The manufacturer shall develop and submit to the administrator a process for producing, shuffling, and packaging preverified cards that includes the following:

- (1) A visual inspection of the back of each card, ensuring the cards are not flawed or marked in any way that might compromise the integrity of the gambling game.

(2) A verification that each package of cards contains the correct number of suits and cards in accordance with the commission-approved rules of the game for the game with which the package of cards is intended for use.

(3) Insertion of the cards in a package with a tamper-evident seal that bears conspicuous indication if the package has been opened. The exterior of the package shall indicate:

1. The total number of decks contained within the package.
2. The commission-authorized game with which the cards are intended for use.
3. The color of the cards within the package.

(4) Generation of a receipt in the package or a label on the sealed package to include the following information:

1. The total number of cards and decks contained within the package.
2. The date and time the cards were shuffled, verified and packaged.
3. Information sufficient to determine the specific details regarding any persons or devices involved in the production, verification or packaging of the cards.

**11.7(10)** Wide area progressive table game systems. A wide area progressive table game system is a method of linking table game progressives, approved in accordance with subrule 11.5(3), by a secured data communication as part of a network that connects participating facilities. The purpose of a wide area progressive table game system is to offer a common progressive jackpot at all participating locations within Iowa or in multiple states. The operation of the wide area progressive table game system (multilink) is permitted, subject to the following conditions:

*a.* The provider of the multilink (provider) shall be an entity licensed as a manufacturer, a distributor, or an operator of gambling games within the state of Iowa or be the qualified parent company of an operator within the state of Iowa. No entity shall be licensed for the sole purpose of providing a multilink.

*b.* Prior to operation of a multilink, the provider shall submit to the administrator for review and approval information sufficient to determine the integrity and security of the multilink. The information must include, but is not limited to, the following:

(1) Central system site location, specifications, and operational procedures. Central site facilities must be monitored whenever the multilink is operational at any participatory licensee.

(2) Encryption and method of secured communication over the multilink and between facilities.

(3) Method and process for obtaining and updating contribution data from table games on the multilink.

(4) Jackpot contribution rates, including information sufficient to determine contributions to the jackpot are consistent across all entities participating in the multilink. Any subsequent changes to the contribution rate of a multilink jackpot must be submitted to the administrator for review and approval.

(5) Jackpot verification procedures.

*c.* Prior to inclusion in a multilink, a licensee shall submit to a gaming representative for review and approval information sufficient to determine the integrity of the multilink processes. The information must include, but is not limited to, the following:

(1) Rules of the game, in accordance with subrule 11.4(3).

(2) Controls and procedures which govern the process of determining and verifying jackpots on a multilinked table game.

(3) The process to report jackpots to the multilink provider.

(4) The process to pay the jackpot to the winner or winners.

*d.* The provider of the multilink shall, upon request, supply reports and information to the administrator which detail the contributions and economic activity of the system, subject to the following requirements:

(1) Aggregate and detail reports that show both the economic activity of the entire multilink, as well as details of each table game on the multilink.

(2) Upon invoicing a facility, details regarding each machine at the facility and each table game's contribution to the multilink for the period of the invoice shall be supplied, as well as any other details required by the administrator.

*e.* Concurrent jackpots which occur before the multilink jackpot meters show reset and updated jackpot amounts will be deemed to have occurred simultaneously. Each winner shall receive the full amount shown on the system jackpot meter.

*f.* The provider must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.

*g.* A meter that shows the amount of the jackpot must be conspicuously displayed at the table games to which the jackpot applies. Jackpot meters may show amounts that differ from the actual system jackpot, due to delays in communication between sites and the central system, but meters shall not display an incorrect amount for an awarded jackpot.

*h.* In calculating adjusted gross receipts, a facility may deduct only its pro rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records supplied by the provider. A facility's pro rata share is based on the amount wagered in conjunction with the rules for that table game progressive from that facility's table games on the multilink compared to the total amount wagered in conjunction with the rules for that table game progressive on the whole system for the time period between awarded jackpots.

*i.* In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

*j.* Any jackpot on the multilink shall be paid immediately upon verification of the jackpot. The responsibility for the immediate payment rests with the facility in which the jackpot is awarded, but is subject to reimbursement requirements from the provider, in accordance with the collection procedures agreed to between the provider and the facility.

*k.* A reserve shall be established and maintained by the provider in an amount not less than the present value of all multilink jackpots offered by the provider and the present value of one additional reset (start amount) for each multilink jackpot offered by the provider.

(1) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by this paragraph, the provider must immediately notify the administrator.

(2) On a quarterly basis, the provider must deliver to the administrator a calculation of system reserves required under this paragraph. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the provider, on a form prescribed by the administrator, validating the calculation.

*l.* Multilinks to be offered in conjunction with jurisdictions in other states within the United States are permitted. Multistate multilinks are subject to the requirements of this subrule; in addition, any multistate plans or controls are subject to administrator review and approval.

[ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 3608C, IAB 1/31/18, effective 3/7/18; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23]

#### **491—11.8(99F) Keno.**

**11.8(1)** Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

**11.8(2)** Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

**11.8(3)** For any type of wager offered, the payout must be at least 70 percent.

**11.8(4)** Multigame tickets shall be limited to 20 games.

**11.8(5)** Writing or voiding tickets for a game after that game has closed is prohibited.

**11.8(6)** All winning tickets shall be valid up to a maximum of one year from the date of purchase. All expired, unclaimed winning tickets shall be subject to the requirements in 491—paragraph 12.11(2) "b."

**11.8(7)** The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

**11.8(8)** Adjusted gross receipts from keno games shall be the difference between dollar value of tickets written and dollar value of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

**11.8(9)** An area of a facility shall not be designated as gaming floor for the sole purpose of keno runners, who accept patron wagering funds remotely from the keno game location.  
[ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—11.9(99F) Slot machine requirements.**

**11.9(1) Payout percentage.** A slot machine game must meet the following maximum and minimum theoretical percentage payouts during the expected lifetime of the game.

*a.* A slot machine game's theoretical payout must be at least 80 percent and no more than 100 percent of the amount wagered. The theoretical payout percentage is determined using standard methods of probability theory. Slot machine games with a bonus feature that is available with varying payouts based on the player's ability shall be allowed if the difference between the minimum and maximum payout for all ability-based outcomes does not exceed a 4 percent contribution to the overall theoretical payout of the slot machine game.

*b.* A slot machine game shall have a probability of obtaining the highest single advertised payout, which must statistically occur at least once in 50 million games.

**11.9(2) Features.** Unless otherwise authorized by the administrator, each slot machine in a casino shall have the following features:

*a.* A casino number at least two inches in height permanently imprinted, affixed, or impressed on the outside of the machine so that the number may be observed by the surveillance camera.

*b.* A clear description displayed on the slot machine of any merchandise or thing of value offered as a payout including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the facility establishes a time limit upon initially offering the merchandise or thing of value, and the availability or unavailability to the patron of the optional cash equivalent value. A cash equivalent value shall be at least 75 percent of the fair market value of the merchandise or thing of value offered.

*c.* Devices, equipment, features, and capabilities, as may be required by the commission, that are specific to each slot machine after the prototype model is approved by the commission.

**11.9(3) Storage media.** Hardware media devices which contain game functions or characteristics, including but not limited to pay tables and random number generators, shall be verified and sealed with evidence tape by a commission representative prior to being placed in operation, as determined by the administrator.

**11.9(4) Posting of the actual aggregate payout percentage.** The actual aggregate payout percentage to the nearest one-tenth of 1 percent (0.1%) of all slot machine games in operation during the preceding three calendar months shall be posted at the main casino entrance, cashier cages, and slot booths by the fifteenth day of each calendar month. For the purpose of this calculation, the actual aggregate payout percentage shall be the slot revenue reported to the commission during the preceding three calendar months divided by the slot coin-in reported to the commission during the preceding three calendar months subtracted from 100 percent.

**11.9(5) Communication equipment.** Equipment must be installed in each slot machine that allows for communication to an online monitoring and control system accessible, with read-only access, to the commission representatives using a communications protocol provided to each licensed manufacturer by the commission for the information and control programs approved by the administrator.

**11.9(6) Meter clears.** Prior to the clearing of electronic accounting meters detailed in paragraph 11.10(2) "c," a licensee must notify a commission representative. All meters recorded by the game must be retained according to the requirements in 491—subrule 5.4(14).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—11.10(99F) Slot machine hardware and software specifications.**

**11.10(1) Hardware specifications.**

a. Electrical and mechanical parts and design principles shall not subject players to physical hazards.

b. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all required information for 30 days after power is discontinued from a slot machine. The backup shall be kept within the locked logic board compartment.

c. An identification badge permanently affixed by the manufacturer to the exterior of the cabinet shall include the following information:

- (1) The manufacturer;
- (2) A unique serial number;
- (3) The gaming device model number; and
- (4) The date of manufacture.

d. The operations and outcomes of each slot machine must not be adversely affected by influences from outside the device.

e. The internal space of a slot machine shall not be readily accessible when the front door is both closed and locked.

f. Logic boards and software storage media which significantly influence the operation of the game must be in a locked compartment within the slot machine.

g. The currency drop container must be in a locked compartment within or attached to the slot machine. Access to the currency storage areas shall be secured by separate locks which shall be fitted with sensors that indicate door open/closed or stacker removed.

h. No hardware switches may be installed that alter the pay tables or payout percentages in the operation of a slot machine. Hardware switches may be installed to control graphic routines, speed of play, and sound.

i. A display which automatically illuminates when a player has won a jackpot or other award not paid automatically and totally by the slot machine and which advises players that they will be paid by an attendant shall be located conspicuously on the slot machine.

j. A payglass/video display shall be clearly identified and shall accurately state the rules of the game and the award that will be paid to the player when the player obtains a specific combination of symbols or other criteria. All information required in this paragraph must be available and readable at all times the slot machine is in service.

k. A light that automatically illuminates when a player has won an amount or is redeeming credits that the machine cannot automatically pay, an error condition has occurred, or a "Call attendant" condition has been initiated by the player shall be located conspicuously on top of the gaming device. At the discretion of the administrator, tower lights may be shared among certain machines or substituted by an audible alarm.

l. If credits are collected and the total credit value is unable to be paid automatically by the gaming device, the device shall lock up until the credits have been paid and the amount collected has been cleared by an attendant handpay or normal operation has been restored.

**11.10(2) Software specifications.**

a. *Random number generator:* Each slot machine must have a random number generator to determine the results of the game symbol selections or production of game outcomes. The selection shall:

- (1) Be statistically independent.
- (2) Conform to the desired random distribution.
- (3) Pass various recognized statistical tests.
- (4) Be unpredictable.
- (5) Have a testing confidence level of 99 percent.

b. *Continuation of game after malfunction is cleared.* Each slot machine must be capable of continuing the current game with all current game features after a malfunction is cleared. This paragraph does not apply if a slot machine is rendered totally inoperable; however, the current wager and all credits appearing on the screen prior to the malfunction must be returned to the player.

*c. Electronic accounting meters.* Each slot machine must maintain electronic accounting meters at all times, regardless of whether the slot machine is being supplied with power. For each meter recording values, the slot machine must be capable of maintaining no fewer than ten digits. For each meter recording occurrences, the slot machine must be capable of maintaining no fewer than eight digits. No slot machine may have a mechanism that will cause the electronic accounting meters to automatically clear due to an error. The electronic meters must record, at a minimum, the following:

- (1) Coin-in.
- (2) Coin-out.
- (3) Drop.
- (4) Attendant-paid jackpots.
- (5) Currency in.
- (6) Currency out.
- (7) External door.
- (8) Bill validator door.
- (9) Machine-paid external bonus payout.
- (10) Attendant-paid external bonus payout.
- (11) Attendant-paid progressive payout.
- (12) Machine-paid progressive payout.

*d. Error conditions.* Each slot machine shall display and report error conditions to the online monitoring system. For machines that display only a code, definitions for all codes must be permanently affixed to the interior of the slot machine. Error conditions that must be displayed and reported include but are not limited to:

- (1) Currency in.
- (2) Currency out.
- (3) Door open.
- (4) RAM.
- (5) Low battery.
- (6) Program authentication.
- (7) Reel spin.
- (8) Power reset.

**11.10(3) Previous slot machine models.** Subject to administrator approval of specific gaming devices, slot machines may be used that do not meet the requirements of subrules 11.10(1) and 11.10(2) but have been certified under previously approved specifications by a commission-designated independent testing facility and maintain a current certification.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—11.11(99F) Slot machine specifications.** Rescinded IAB 8/12/09, effective 9/16/09.

**491—11.12(99F) Progressive slot machines.**

**11.12(1) Meter required.** A progressive machine is a slot machine game with an award amount that increases based on a function of credits bet on the slot machine and that is awarded when a particular configuration of symbols or events is displayed on the slot machine. Random events generating awards independent of the base slot machine game and not dependent on any specific slot machine game shall be considered bonus features. A progressive slot machine or group of linked progressive slot machines must have a meter showing the progressive jackpot payout.

**11.12(2) Progressive controllers.** The reset or base value and the rate of increment of a progressive jackpot game must be filed with a commission representative prior to implementation. A reset or base value must equal or exceed the equivalent nonprogressive jackpot payout.

**11.12(3) Limits.** A facility may impose a limit on the progressive jackpot payout of a slot machine if the limit imposed is greater than the progressive jackpot payout at the time the limit is imposed. The facility must prominently display a notice informing the public of the limit. No progressive meter may be turned back to a lesser amount unless one of the following circumstances occurs:

- a. The amount shown on the progressive meter is paid to a player as a jackpot.
- b. It is necessary to adjust the progressive meter to prevent it from displaying an amount greater than the limit imposed by the facility.
- c. It is necessary to change the progressive indicator because of game malfunction.

**11.12(4) *Transfer of jackpots.*** In the event of malfunction, replacement, or other reason approved by the commission, a progressive jackpot that is removed shall be transferred, less the reset value, to other progressive slot machine jackpots of similar progressive wager and probability at the same facility within 30 days from the removal date. In the event a similar progressive jackpot at the same facility is unavailable, other transfers shall be allowed. A commission representative shall be notified in writing prior to a removal or transfer.

**11.12(5) *Records required.*** Records must be maintained that record the amount shown on a progressive jackpot meter. Supporting documents must be maintained to explain any reduction in the payoff amount from a previous entry. The records and documents must be retained for a period of three years unless permission to destroy them earlier is given in writing by the administrator.

**11.12(6) *Transfer of progressive slot machines.*** A progressive slot machine, upon permission of the administrator, may be moved to a different facility if a bankruptcy, loss of license, or other good cause warrants.

**11.12(7) *Linked machines.*** Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The probability of winning the progressive jackpot multiplied by the maximum amount wagered shall be within the maximum allowable tolerance for all games on the link. For the purpose of this calculation, the maximum allowable tolerance when linked with any other game shall be the product of the probability of winning the progressive jackpot, adjusted for amount wagered, multiplied by:

- a. 1 percent (0.01) for games where the probability of winning the progressive jackpot is less frequent than or equal to 1 in 100,000; or
- b. 5 percent (0.05) for games where the probability of winning the progressive jackpot is more frequent than 1 in 100,000.

**11.12(8) *Wide area progressive systems.*** A wide area progressive system is a method of linking progressive slot machines or electronic gaming machines by secured data communication as part of a network that connects participating facilities. The purpose of a wide area progressive system is to offer a common progressive jackpot (system jackpot) at all participating locations within Iowa or in multiple states. The operation of a wide area progressive system (multilink) is permitted, subject to the following conditions:

- a. The provider of a multilink (provider) shall be an entity licensed as a manufacturer, a distributor, or an operator of gambling games within the state of Iowa or be the qualified parent company of an operator of gambling games within the state of Iowa. No entity shall be licensed for the sole purpose of providing a multilink.

- b. Prior to operation of a multilink, the provider shall submit to the administrator for review and approval information sufficient to determine the integrity and security of the multilink. The information must include, but is not limited to, the following:

- (1) Central system site location, specifications, and operational procedures.
- (2) Encryption and method of secured communication over the multilink and between facilities.
- (3) Method and process for obtaining meter data from slot machines on the multilink.
- (4) Disbursement options for jackpot payoffs, including information for periodic payments. Periodic payment information, including number of payments and time between payments must be displayed as part of the slot machine pay table or prominently displayed on the face of the slot machine.
- (5) Jackpot contribution rates, including information sufficient to determine contributions to the jackpot are consistent across all entities participating in the multilink. Any subsequent changes to the contribution rate of a multilink jackpot must be submitted to the administrator for review and approval.
- (6) Jackpot verification procedures.
- (7) Jackpot discontinuation procedures, including procedures for distribution of contributions to another jackpot or return of pro rata shares to participating facilities.

*c.* The provider of the multilink shall, upon request, supply reports and information to the administrator which detail the contributions and economic activity of the system, subject to the following requirements:

(1) Aggregate and detail reports that show both the economic activity of the entire multilink, as well as details of each machine on the multilink.

(2) Upon invoicing a facility, details regarding each machine at the facility and each machine's contribution to the multilink for the period of the invoice shall be supplied, as well as any other details required by the administrator.

*d.* Concurrent jackpots which occur before the multilink jackpot meters show reset and updated jackpot amounts will be deemed to have occurred simultaneously. Each winner shall receive the full amount shown on the system jackpot meter.

*e.* The provider must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.

*f.* A meter that shows the amount of the system jackpot must be conspicuously displayed at or near the machines to which the jackpot applies. Jackpot meters may show amounts that differ from the actual system jackpot, due to delays in communication between sites and the central system, but meters shall not display an incorrect amount for an awarded jackpot.

*g.* In calculating adjusted gross receipts, a facility may deduct its pro rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records supplied by the provider. A facility's pro rata share is based on the amount of coin-in from that facility's machines on the multilink, compared to the total amount of coin-in on the whole system for the time period between awarded jackpots.

*h.* In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

*i.* The payment of any system jackpot offered on a multilink shall be administered by the provider, and the provider shall have sole liability for payment of any system jackpot the provider administers.

*j.* The provider shall comply with the following:

(1) A reserve shall be established and maintained by the provider in an amount of not less than the sum of the following amounts:

1. The present value of the amount currently reflected on the jackpot meters of the multilink.

2. The present value of one additional reset (start amount) of the multilink.

(2) For system jackpots disbursed in periodic payments, a provider shall fund the periodic payments within 90 days of the notice of the jackpot award with:

1. Purchase of a qualified investment. A copy of such qualified investment shall be provided to the administrator within 30 days of purchase. Any qualified investment shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment and shall have a maturity date prior to the date the periodic jackpot payment is required to be made; or

2. A surety bond or an irrevocable letter of credit with an independent financial institution which provides periodic payments to a winner should the establishment default for any reason. The written agreement establishing a surety bond or irrevocable letter of credit shall be submitted to the administrator within 30 days of purchase; or

3. An irrevocable trust with an independent financial institution in accordance with a written trust agreement approved by the administrator which provides periodic payments from an unallocated pool of assets to a group of winners and which shall expressly prohibit the winner from encumbering, assigning or otherwise transferring in any way the winner's right to receive the deferred portion of the winnings except to the winner's estate. The assets of the trust shall consist of federal government securities including but not limited to treasury bills, treasury bonds, savings bonds or other federally guaranteed securities in an amount sufficient to meet the periodic payments as required; or

4. Another irrevocable method of providing the periodic payments to a winning player consistent with the purpose of this subparagraph, and which is approved by the administrator prior to implementation.

(3) The provider shall not be permitted to sell, trade, or otherwise dispose of any periodic payment funding unless approval to do so is first obtained from the administrator.

(4) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph 11.12(8)“j”(1) above, or in the event of nonpayment of a periodic payment directly by the provider, the provider must immediately notify the administrator. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the provider to be unable to fulfill, or which may otherwise impair the provider’s ability to satisfy, the provider’s jackpot payment obligations.

(5) On a quarterly basis, the provider must deliver to the administrator a calculation of system reserves required under subparagraph 11.12(8)“j”(1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the provider, on a form prescribed by the administrator, validating the calculation.

(6) On an annual basis, the provider must deliver to the administrator updated information sufficient to determine compliance with the funding requirements of all outstanding periodic payments. This shall include an updated listing of all winners showing outstanding periodic payment amounts and any updates to funding documents and agreements. The updated information shall come with a certification of compliance signed by a duly authorized financial officer of the provider.

(7) The reserve required under subparagraph 11.12(8)“j”(1) must be examined by an independent certified public accountant according to procedures approved by the administrator. Two copies of the report must be submitted to the administrator within 90 days after the conclusion of the provider’s fiscal year.

(8) The administrator may require additional information or audits at any time to ensure compliance with this paragraph.

*k.* For system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a “qualified prize option,” as that term is defined in Section 451(h) of the Internal Revenue Code. The provider shall calculate the single cash payment based on the discount rate. Until the new discount rate becomes effective, the discount rate selected by the provider shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected discount rate.

*l.* Multilinks to be offered in conjunction with jurisdictions in other states within the United States are permitted. Multistate multilinks are subject to the requirements of this subrule; in addition, any multistate plans or controls are subject to administrator review and approval.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 1876C, IAB 2/18/15, effective 3/25/15; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4378C, IAB 3/27/19, effective 5/1/19]

#### **491—11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling.**

**11.13(1) *Impact on gambling.*** In considering whether a manufacturer or distributor applicant will be licensed or a specific product will be distributed, the administrator shall give due consideration to the economic impact of the applicant’s product, the willingness of a licensed facility to offer the product to the public, and whether its revenue potential warrants the investigative time and effort required to maintain effective control over the product.

**11.13(2) *Licensing standards.*** Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees; integrity of financial backers; and any effect on the Iowa economy.

**11.13(3) *Application procedure.*** Application for a manufacturer’s or a distributor’s license shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

*a.* Disclosure of ownership interest, directors, or officers of licensees.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph (1) above.

*b.* Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

*c.* A bank or cashier's check made payable to the Iowa Racing and Gaming Commission for the annual license fee as follows:

(1) A manufacturer's license shall be \$250.

(2) A distributor's license shall be \$1,000.

*d.* A copy of each of the following:

(1) Articles of incorporation and certificate of incorporation, if the business entity is a corporation.

(2) Partnership agreement, if the business entity is a partnership.

(3) Trust agreement, if the business entity is a trust.

(4) Joint venture agreement, if the business entity is a joint venture.

(5) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

*e.* A copy of each of the following types of proposed distribution agreements, where applicable:

(1) Purchase agreement(s).

(2) Lease agreement(s).

(3) Bill(s) of sale.

(4) Participation agreement(s).

*f.* Supplementary information. Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the information requested within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

*g.* Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

*h.* The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

*i.* Disclosure. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

*j.* Public disclosure. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

**11.13(4) Temporary license certificates.**

*a.* A temporary license certificate may be issued at the discretion of the administrator.

*b.* Temporary licenses—period valid. Any certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue.

Failure to obtain a permanent license within the designated time may result in revocation of the license eligibility, fine, or suspension.

**11.13(5) Withdrawal of application.** A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

**11.13(6) Record keeping.**

*a. Record storage required.* Distributors and manufacturers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees under these regulations.

*b. Record retention.* The records listed in 11.13(6)“a” shall be retained as required by 491—subrule 5.4(14).

**11.13(7) Violation of laws or regulations.** Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above.

**11.13(8) Consent to inspections, searches, and seizures.** Each manufacturer or distributor licensed under this chapter shall consent to inspections, searches, and seizures deemed necessary by the administrator and authorized by law in order to enforce licensing requirements.

These rules are intended to implement Iowa Code chapter 99F.

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CHAPTER 12  
ACCOUNTING AND CASH CONTROL

**491—12.1(99F) Definitions.**

“*Casino*” means all areas of a facility where gaming is conducted.

“*Coin*” means tokens, nickels, and quarters of legal tender.

“*Commission*” means the racing and gaming commission.

“*Container*” means:

1. A box attached to a gaming table in which shall be deposited all currency in exchange for gaming chips, fill and credit slips, requests for fill forms, and table inventory forms.

2. A canister in a slot machine cabinet in which currency is retained by slot machines and not used to make change or automatic jackpot payouts.

“*Count room*” means an area in the facility where contents of containers are counted and recorded.

“*Currency*” means any coin or paper money of legal tender and paper forms of cashless wagering.

“*Drop*” means removing the containers from the casino to the count room.

“*Electronic wagering account*” means an individual player’s account established by an authorized facility into which a player can deposit funds for the purpose of wagering on authorized gambling devices.

“*Facility*” means an entity licensed by the commission to conduct gaming operations in Iowa.

“*Hopper*” means a payout reserve container in which coins are retained by a slot machine to automatically pay jackpots.

“*Internal controls*” means the facility’s system of internal controls.

“*Request*” means a request for credit slip, request for fill slip, or request for jackpot payout slip.

“*Slip*” means a credit slip, fill slip, or jackpot payout slip.

“*Slot machine*” means a mechanical or electronic gambling game device into which a player may deposit currency or other forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 5422C, IAB 2/10/21, effective 3/17/21]

**491—12.2(99F) Accounting records.**

**12.2(1)** Each facility shall maintain complete and accurate records of all transactions pertaining to revenues and costs.

**12.2(2)** General accounting records shall be maintained on a double entry system of accounting with transactions recorded on an accrual basis.

**12.2(3)** Detailed, supporting, and subsidiary records shall be maintained. The records shall include, but are not limited to:

- a. Statistical game records by gaming day to reflect drop and win amounts by table for each game.
- b. Records of all investments, advances, loans, and receivable balances due the facility.
- c. Records related to investments in property and equipment.
- d. Records which identify the handle, payout, win amounts and percentages, theoretical win amounts and percentages; and differences between theoretical and actual win amounts and percentages for each slot machine on a week-to-date, month-to-date, and year-to-date basis.
- e. Records of all loans and other amounts payable by the facility.
- f. Records that identify the purchase, receipt, and disposal of gaming chips and tokens. All methods of disposal are subject to administrator approval.

**12.2(4)** Whenever forms or serial numbers are required to be accounted for or copies of forms are required to be compared for agreement and exceptions are noted, irreconcilable gambling revenue exceptions shall be reported immediately and in writing to the commission. All other exceptions shall be recorded in a log, accessible to commission representatives, maintained according to the requirements in 491—subrule 5.4(14).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—12.3(99F) Facility internal controls.**

**12.3(1)** Each facility shall submit a description of internal controls to the commission. The submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the administrator. The submission shall include and provide for the following:

*a.* Administrative control that includes, but is not limited to, the plan of organization and the procedures and records that are concerned with the decision processes leading to management's levels of authorization of transactions.

*b.* Accounting control that includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records. The accounting control shall be designed to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general and specific authorization, which shall be consistent with the requirements of this chapter.

(2) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.

(3) Access to assets is permitted only in accordance with management authorization, which shall be consistent with the requirements of this chapter.

(4) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

*c.* Competent personnel with integrity and an understanding of prescribed internal controls.

*d.* The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

*e.* Surveillance internal controls that include:

(1) Surveillance departments that shall be operated in an autonomous fashion, as separate and distinct entities from all other departments. A gaming facility's organizational structure shall place the director of the surveillance department directly under the span of control and authority of the operator's board of directors or appropriate parent company executive where practical. Under no circumstances will the director of surveillance report to or take direction from any authority at a level below the general manager.

(2) Administration of the network for the purpose of utilizing and transmitting live or recorded views or images of a video surveillance system for asset protection, loss prevention, investigation of tort/liability claims, game protection, employee oversight, resolution of patron disputes, corporate governance, management analysis, or other use consistent with a licensee's statutory responsibilities as approved by the administrator.

(3) A system maintenance plan that includes management of:

1. Installations, changes, movements, and malfunctions;

2. A log of available and completed system upgrades, updates, and patches, including descriptions;

3. Universal power supply (UPS) capability, live video and recording redundancies;

4. Electrical outages, emergency evacuation, providing alternative coverage of dedicated areas for DCI approval; and

5. Job descriptions and training of employees responsible for system maintenance, and any external maintenance agreements.

*f.* Game control, including but not limited to procedures for the storage, removal and record of implements of gambling. The gaming control shall be designed to document:

(1) Access to implements of gambling not in use.

(2) Method for removal of implements of gambling from an active gambling game.

(3) Procedures governing the record of total inventory of implements of gambling, documenting both additions to and removal from storage and active use.

*g.* Preverified card control, for use with cards approved pursuant to 491—subrule 11.7(9). Controls shall be designed to document:

(1) The procedure governing inspection of the packaging when the cards are put into use on a live table game, including verification of the tamper-evident seal and review of the manufacturer-generated receipt for relevant details.

(2) The procedure for employee breaking of the tamper-evident seal to sign the receipt with name, time the package is being placed in use, and specific table where the package is being used.

(3) The procedure and period to retain the receipt and the details of use. The period of retention must correspond with records maintained by the manufacturer of the cards in accordance with the process submitted pursuant to 491—paragraph 11.7(9)“b.”

(4) Any additional procedures that will be used to verify or randomize preverified cards prior to play.

**12.3(2)** A commission representative shall review each submission required by subrule 12.3(1) and determine whether it conforms to the requirements of Iowa Code chapter 99F and is consistent with the intent of this chapter and whether the internal controls submitted provide adequate and effective control for the operations of the facility. If the commission representative finds any insufficiencies, the insufficiencies shall be specified in writing to the facility, which shall make appropriate alterations. No facility shall commence gaming operations unless and until the internal controls are approved.

**12.3(3)** Each facility shall submit to the commission any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by a commission representative. The proposed changes shall be submitted to the commission and the changes may be approved or disapproved by the commission representative. No facility shall alter its internal controls until the changes are approved.

**12.3(4)** It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with all internal controls.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4378C, IAB 3/27/19, effective 5/1/19; ARC 4954C, IAB 2/26/20, effective 4/1/20]

#### **491—12.4(99F) Accounting controls within the cashier’s cage.**

**12.4(1)** The assets for which the cashiers are responsible shall be maintained on an imprest basis. At the end of each shift, the cashiers assigned to the outgoing shift shall record on a cashier’s count sheet the face value of each cage inventory item counted and the total of the opening and closing cage inventories and shall reconcile the total closing inventory with the total opening inventory.

**12.4(2)** At the conclusion of gaming activity each gaming day, a copy of the cashiers’ count sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories; agreement of amounts thereon to other forms, records, and documents required by this chapter; and the recording of all transactions.

**12.4(3)** Each facility shall place on file with the commission the names of all persons authorized to enter the cashier’s cage and persons who possess the combination or keys to the locks securing the entrance to the cage.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 3608C, IAB 1/31/18, effective 3/7/18]

**491—12.5(99F) Gaming table container.** Each gaming table in a casino shall have attached to it a container.

**12.5(1)** Each container shall have:

*a.* A lock securing the contents of the container, the key to which shall be logged out by the count team.

*b.* A separate lock securing the container to the gaming table, the key to which shall be different from the key in paragraph 12.5(1)“a” and shall be logged out by the drop team, count team, or emergency drop personnel pursuant to subrule 12.13(1).

*c.* A slot opening through which currency, forms, records, and documents can be inserted.

*d.* A mechanical device that will close and lock the slot opening upon removal of the container from the gaming table.

**12.5(2)** Keys referred to in this rule shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—12.6(99F) Accepting currency at gaming tables.** Whenever currency is presented by a patron at a gaming table in exchange for gaming chips, the following procedures and requirements shall be observed:

**12.6(1)** The dealer or boxperson accepting the currency shall spread the currency on the top of the gaming table.

**12.6(2)** The dealer or boxperson shall verbalize the currency value in a tone of voice necessary to be heard by the patron and the casino supervisor assigned to the gaming table.

**12.6(3)** The dealer or boxperson shall take the currency from the top of the gaming table and place it into the container immediately after verbalizing the amount.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—12.7(99F) Procedures for the movement of gaming chips to and from gaming tables.**

**12.7(1) Slips.** Each slip shall be sequentially numbered, shall be simultaneously printed in two or three copies, and shall discharge in the cashier's cage. Casino supervisors or casino clerks shall input data for each slip, and each prepared copy shall contain the following information:

- a. The type of transfer.
- b. The sequentially ordered slip number.
- c. The date and time of preparation.
- d. The total amount of each denomination.
- e. The total amount of all denominations.
- f. The game and table number.

**12.7(2) Distribution of chips to a gaming table.** On receipt of a slip in the cashier's cage for distribution of gaming chips to a table, the following procedures shall apply:

a. A cashier shall prepare the gaming chips and sign all copies of the slip attesting to the accuracy of the totals.

b. A security employee, or other employee authorized by the internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy. One copy of the slip shall remain with the cashier, if applicable, while two copies are transported with the gaming chips to the gaming table.

c. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall sign all copies of the slip attesting to the accuracy of the fill.

d. Upon verification and placement of the gaming chips, the employee responsible for transporting the chips to the gaming table shall observe as the dealer or boxperson places one copy of the slip in the container of the gaming table. The employee shall then transport the remaining copy of the slip to the cashier's cage to be maintained and controlled by a cashier.

**12.7(3) Removal of chips from a gaming table.** On receipt of a slip in the cashier's cage for removal of gaming chips from a table, the following procedures shall apply:

a. A security employee, or other employee authorized by the internal controls, shall transfer all copies of the slip to the gaming table.

b. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall prepare the removal and sign all copies of the slip attesting to the accuracy.

c. The security employee, or other employee authorized by internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy.

d. One copy of the slip shall be immediately placed in the container of the gaming table from which the gaming chips were removed.

e. The security employee, or other employee authorized by internal controls, shall transport the chips and the remaining copy of the slip to the cashier's cage.

f. The cashier shall compare this copy of the slip to the gaming chips received and shall sign the copy attesting to the accuracy. This copy of the slip shall be maintained and controlled by the cashier.

**12.7(4) Slip reconciliation.** At the end of each gaming day, copies of each of the slips maintained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of

the slips obtained by the count team from the gaming table containers. Copies shall also be compared for agreement with the stored data.

**12.7(5) *Stored data.*** All information required by subrule 12.7(1) shall be stored in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of a slip.

**12.7(6) *Manual process.*** In the event the online monitoring and control system is unavailable, the facility staff shall perform transfers of gaming chips to and from gaming tables using manual requests and slips.

*a.* Requests shall be prepared by the casino supervisor or casino clerk. For the distribution of chips to the gaming table, the request shall be signed by the security employee, or other employee authorized by the internal controls, and shall be left with the cashier prior to the transfer of gaming chips and slips required by paragraph 12.7(6) “*b.*” For the removal of chips from the gaming table, the request shall be signed at the gaming table by the security employee, or other employee authorized by the internal controls, prior to the transfer of gaming chips and slips required by paragraph 12.7(6) “*b.*” and shall be placed in the container when the slip signed by the cashier has been returned to the gaming table.

*b.* Slips shall be prepared by cashiers in the cage using a three-part serially prenumbered form in a locked dispenser. The dispenser shall discharge two copies of the slip that have been filled out and signed by the cashier and shall retain the third copy in a continuous form in the dispenser. The same procedures shall be followed and the same set of signatures shall be utilized as required by subrules 12.7(2) and 12.7(3).

*c.* The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for gaming chip movements and to replace the stored data used pursuant to subrule 12.7(4). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

**12.7(7) *Modifications.*** Modifications to the procedures described in subrules 12.7(2), 12.7(3), and 12.7(4) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

**12.7(8) *Voided transactions.*** Whenever it becomes necessary to void a slip, all copies shall be clearly marked “void” and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.7(2), 12.7(3), and 12.7(5).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 1876C, IAB 2/18/15, effective 3/25/15]

#### **491—12.8(99F) Dropping or opening a gaming table.**

**12.8(1)** The table inventory slips shall be a two-part form, a “closer” and an “opener,” containing the following:

- a.* The date and time of preparation.
- b.* The game and table number.
- c.* The total value of each denomination of gaming chips.
- d.* The total value of all denominations of gaming chips.

**12.8(2)** Whenever a gaming table is dropped or upon initial opening after a drop, the gaming chips at the gaming table shall be counted by the dealer or boxperson assigned to the gaming table while observed by a casino supervisor assigned to the gaming table.

**12.8(3)** Signatures attesting to the accuracy of the information recorded on the table inventory slips at the time of dropping or opening of the gaming tables shall be of the dealer or boxperson and the casino supervisor assigned to the gaming table who observed the dealer or boxperson count the contents of the table inventory.

**12.8(4)** Upon meeting the signature requirements described in subrule 12.8(3):

*a.* The closer, at dropping, shall be deposited in the container immediately prior to the closing of the table. The opener and the gaming chips remaining at the table shall be placed in a secured, locked area on the table.

*b.* The opener, at opening, shall be immediately deposited in the container.

**12.8(5)** Upon opening a gaming table, if the totals on the gaming inventory form vary from the opening count, the casino supervisor shall fill out an error notification slip. The casino supervisor and dealer or boxperson shall sign the error notification slip and deposit the slip in the container.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—12.9(99F) Slot machine container and key.** Each slot machine shall have a container(s) that is housed in a locked compartment(s) separate from any other compartment of the slot machine.

**12.9(1)** Each container shall:

*a.* Have a lock securing the contents of the container, the key to which shall be logged out by the count team or employees authorized by the internal controls to address container malfunction issues.

*b.* Have a lock to each compartment securing the container to the slot machine, the key to which shall be different from the key in paragraph 12.9(1)“*a*” and shall be logged out by the drop team, employees authorized by the internal controls to address container malfunction issues, or employees transporting container(s) according to rule 491—12.13(99F).

*c.* Be identified at the time of removal by a number corresponding to the number of the slot machine from which the container is removed.

**12.9(2)** Keys referred to in subrule 12.9(1) shall be maintained and controlled by the security department in a secured area. The facility shall establish a log-out procedure for all keys removed from the secured area.

**12.9(3)** Other keys to each slot machine or any device connected thereto which may affect the operation of the slot machine shall be maintained in a secure place and controlled by the slot department.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—12.10(99F) Procedures for hopper fills and attendant payouts.**

**12.10(1) Slips.** Each slip shall be sequentially numbered, and two copies shall be simultaneously printed. An employee authorized by the internal controls shall input data for each slip, and each prepared copy shall contain the following information:

*a.* The type of transaction.

*b.* The sequentially ordered slip number.

*c.* The date and time of preparation.

*d.* For attendant payouts, the amount to be paid and the cage location from which the amount is to be paid.

*e.* For jackpots, the winning combination to be paid.

*f.* For hopper fills, the denomination and amount of currency to be distributed.

**12.10(2) Hopper fills.** A slip shall be prepared by a person authorized by the internal controls whenever a slot machine fill is required. On receipt or preparation of a slip in the cashier’s cage, the following procedures shall apply:

*a.* The cashier, upon providing the coins to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.

*b.* The employee authorized by the internal controls, upon receipt of the coins, shall sign all copies of the slip and transport the coins and one copy of the slip to the slot machine. The remaining copy shall remain with the cashier.

*c.* An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(2)“*a*” and 12.10(2)“*b*,” shall observe the deposit of the coins into the slot machine hopper and the closing and locking of the slot machine door. This employee shall then sign the copy of the slip at the slot machine.

*d.* Upon completion of the fill, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

**12.10(3) Attendant payouts.** Whenever a patron wins a jackpot or has accumulated credits not totally and automatically paid directly from a slot machine, a slip shall be prepared by a person authorized by the internal controls. On receipt or preparation of a slip for an attendant payout in the cashier’s cage, the following procedures shall apply:

a. The cashier, upon providing the payment to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.

b. The employee authorized by the internal controls, upon receipt of the payment, shall sign all copies of the slip and transport the payment and one copy of the slip to the slot machine. The remaining copy of the slip shall remain with the cashier.

c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(3) "a" and 12.10(3) "b," shall observe the payment of the patron. For jackpots, the employee shall verify the symbols on the slot machine. For jackpots in excess of \$10,000, the employee shall be a supervisor or higher authority. In either case, the employee shall then sign the copy of the slip at the slot machine.

d. Upon completion of the payout, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

e. For a slot machine jackpot in excess of \$100,000, a facility shall notify a commission representative in accordance with the immediate notification process established by 491—subrule 5.4(5).

**12.10(4) Overrides.** System overrides shall be authorized by a slot supervisor or an employee authorized by the internal controls. This employee shall not perform the duties and signature requirements of subrules 12.10(2) and 12.10(3) in any transaction where the employee authorizes a system override. In addition to the signature requirements of subrules 12.10(2) and 12.10(3), the signature of the authorizing employee shall be on all copies of the slip.

**12.10(5) Slip reconciliation.** At the end of each gaming day, copies of the slip retained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips deposited in the area controlled by the accounting department and for recording on the slot win sheet. Copies shall also be compared for agreement with the stored data.

**12.10(6) Stored data.** All information required by subrule 12.10(1) shall be stored in the online monitoring and control system in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of the slip.

**12.10(7) Modifications.** Modifications to the procedures described in subrules 12.10(2) to 12.10(5) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

**12.10(8) Manual process.** In the event the online monitoring and control system is unavailable, the facility staff shall perform hopper fills and manual payouts using manual slips. Manual slips shall be three-part serially prenumbered forms. For use of manual slips, the following shall apply:

a. Slips shall be placed in a locked dispenser. Once prepared, the dispenser shall discharge two copies of the slip, while retaining the third copy in a continuous form. They shall be prepared in the cashier's cage at the request of an employee authorized by the internal controls. Procedures for the two dispensed copies shall follow subrules 12.10(2) and 12.10(3).

b. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for hopper fills or manual payouts and to replace the stored data used pursuant to subrule 12.10(5). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

**12.10(9) Voided transactions.** Whenever it becomes necessary to void a slip, all the copies shall be clearly marked "void" and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.10(2) to 12.10(5).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

#### **491—12.11(99F) Attendant and ticket payout accounting.**

**12.11(1) Attendant payouts.** Under this rule, unless otherwise subject to Iowa Code chapter 556, jackpots and accumulated credits paid by a slip that are unpaid or unclaimed at the close of a facility's fiscal year shall be disallowed as a deduction from gross receipts for the calculation of adjusted gross

revenue for the wagering tax. A facility shall make this adjustment to revenue within 90 days of the close of the facility's fiscal year.

**12.11(2) Ticket payouts.** Payouts dispensed by a ticket issued directly from a gaming device must have a minimum payout redemption period of 90 days from the date of issuance.

*a.* Notwithstanding 491—subrule 5.4(14), an issued ticket redeemed for cash or deposited in a slot machine for machine credits shall be retained for a minimum of 90 days from the redemption date. The ticket may be subsequently destroyed if record of the transaction is retrievable by other means.

*b.* At the close of the facility's fiscal year, tickets issued in previous fiscal years and tickets with expired redemption periods that remain outstanding and unredeemed are subject to the requirements of subrule 12.11(1).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

#### **491—12.12(99F) Computer recording requirements and monitoring of slot machines.**

**12.12(1)** A facility shall have an online monitoring and control system connected to each slot machine in the casino to record and monitor the slot machine's activities.

**12.12(2)** The online monitoring and control system shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

*a.* Record the number and total of currency placed in the slot machine for the purpose of activating play.

*b.* Record the number and total of currency in the container(s).

*c.* Record the number and total of currency to be paid manually as the result of a jackpot.

*d.* Record the electronic meter information required by 491—paragraph 11.10(2)“c.”

**12.12(3)** The online monitoring and control system shall monitor and detect machine exception codes and error messages as required by 491—paragraph 11.10(2)“d.”

**12.12(4)** The online monitoring and control system shall store in machine-readable form all information required by subrules 12.12(2) and 12.12(3), and the stored data shall not be susceptible to change or removal.

**12.12(5)** The licensee shall maintain a current log, accessible to commission representatives, of all changes and updates made to the online monitoring and control system that affect any part of the system's message digest. These changes and updates shall be approved as required by 491—subrule 11.4(1).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

#### **491—12.13(99F) Transportation of containers.**

**12.13(1)** Each facility shall place on file with a commission representative a schedule setting forth the specific times at which the containers will be brought to or removed from the gaming tables or slot machines for transport to the count room. An emergency drop that deviates from the schedule shall be permissible for instances of full containers or container malfunctions provided that representatives from the security department and another department conduct the drop and the process is recorded by the surveillance department from the time of machine entry until the container is secured in the count room or other approved secure location. The commission representative shall be notified after each occurrence.

**12.13(2)** A security employee shall accompany and observe the drop team. For table games, all containers removed from the gaming tables shall be transported by a security employee and a table game supervisor.

**12.13(3)** All containers removed from slot machine cabinets shall:

*a.* Be removed by a drop team wearing uniforms or outer garments as required by subrule 12.15(2).

*b.* Be replaced immediately with an empty container that shall be secured in the cabinet.

**12.13(4)** All containers removed shall be transported directly to, and secured in, the count room or in a secure area within the facility until the containers can be transferred to the count room.

**12.13(5)** Empty containers not secured to the gaming tables or slot machine compartment shall be stored in the count room or an approved secured location. Empty containers may be removed from the count room or secured area for repair or destruction provided the surveillance department is notified and the inside of the container is held up to the full view of a closed circuit television camera prior to removal.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—12.14(99F) Count room—characteristics.**

**12.14(1)** Each facility shall have a count room that shall:

*a.* Be designed and constructed to provide maximum security for materials housed within and the activities conducted therein.

*b.* Have an alarm device connected to the entrance of the room that causes a signaling to the monitors of the closed circuit surveillance system and to the commission representative's office whenever the door to the room is opened.

*c.* Have, if currency is counted within the count room, a count table constructed of clear glass or similar material for the emptying, counting, and recording of the contents of containers.

**12.14(2)** All room keys shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area. [ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—12.15(99F) Opening, counting, and recording contents of containers in the count room.**

**12.15(1)** Each facility shall file with a commission representative the specific times and procedures for opening, counting, and recording the contents of containers.

**12.15(2)** All persons present in the count room during the counting process, unless expressly exempted by a commission representative, shall wear a full-length, one-piece, pocketless outer garment with openings only for the arms, feet, and neck that extends over any other garments and covers the tops of any footwear.

**12.15(3)** Persons shall not:

*a.* Carry a pocketbook or other container into the count room, unless it is transparent.

*b.* Remove their hands from or return them to a position on or above the count table unless the backs and palms of the hands are first held straight out and exposed to the view of other members of the count team and the closed circuit surveillance camera.

**12.15(4)** Requirements for conducting the count.

*a.* Immediately prior to the commencement of the count, the count team shall notify the person assigned to the surveillance room that the count is about to begin, after which the surveillance department shall make a video recording with the time and date inserted thereon of the entire counting process.

*b.* Prior to counting the contents of the containers, the doors to the count room shall be locked and no person shall be permitted to enter or leave the count room, except during an emergency or on scheduled breaks, until the entire counting, recording, and verification process is completed. During this time, a commission representative shall have unrestricted access.

*c.* When a container is placed on a count table or coin scale, the count team shall ensure that the table or machine number associated with a container is identified to the surveillance department.

*d.* A machine may be used to automatically count the contents of a container.

*e.* The contents of each container shall be emptied on the count table or coin scale and either manually counted separately on the count table or counted in an approved currency counting machine located in a conspicuous location on, near, or adjacent to the count table or coin scale. These procedures shall at all times be conducted in full view of the closed circuit surveillance cameras located in the count room.

*f.* Immediately after the contents of a container are emptied onto the count table or coin scale, the inside of the container shall be held up to the full view of a closed circuit surveillance camera and shall be shown to at least one other count team member to ensure all contents of the container have been removed and, if applicable, the container shall then be locked. By the end of the count process, empty containers shall be secured in a container cart or an area separate from uncounted containers.

*g.* If the original count is being performed by a machine that automatically counts and records the amounts of the contents of each individual container, an aggregate count may be permitted in substitution of a second container count.

*h.* For manually counted containers:

(1) The count team members shall place the contents of each container into separate stacks on the count table by denomination of currency and by type of form, record, or document, except that a machine may be used to automatically sort currency by denomination.

(2) Each denomination of currency shall be counted separately by one count team member who shall group currency of the same denomination on the count table in full view of a closed circuit surveillance camera. The currency shall then be counted by a second count team member who is unaware of the result of the original count. The second count team member, after completing this count, shall confirm the accuracy of the total, either orally or in writing, with that reached by the first count team member.

**12.15(5) Table games.**

*a.* As the contents of each container from a table game are counted, one count team member shall record the following information by game, table number, date, and time on a master game report or supporting documents:

- (1) The amount of each denomination of currency.
- (2) The amount of all denominations of currency.
- (3) The total amounts of currency.
- (4) The total amount of gaming chips.
- (5) The amount of the opener.
- (6) The amount of the closer.
- (7) The serial number and amount of each fill.
- (8) The amount of all fills.
- (9) The serial number and amount of each credit.
- (10) The amount of all credits.
- (11) The win or loss.

*b.* After the contents of each container are counted and recorded, one member of the count team shall record by game on the master game report the total amounts of currency, table inventory slips, fills, credits, and win or loss together with any other required information.

*c.* Notwithstanding the requirements of paragraphs 12.15(5) “*a*” and “*b*,” if the internal controls allow for the recording of fills, credits, and table inventory slips on the master game report or supporting documents prior to commencement of the count, a count team member shall compare for agreement the totals of the amounts recorded thereon to the fills, credits, and table inventory slips removed from the containers.

*d.* After preparation of the master game report, each count team member shall sign the report attesting to the accuracy of the information contained thereon.

*e.* Currency and gaming chips shall not be removed from the count room after commencement of the count until the total has been verified and accepted by a cashier. At the conclusion of the count, all currency and gaming chips removed from the containers shall be counted by a cashier in the presence of a count team member prior to having access to the information recorded on the master game report. The cashier shall attest to the accuracy of the amount received from the gaming tables by signature on the master game report, after which a count team member shall sign the master game report evidencing the fact that both the cashier and count team have agreed on the total counted. The verified funds shall then remain in the custody of the cashier.

*f.* After the master game report has been signed, the requests, slips, and table inventory slips removed from the containers shall be attached. The report, with attachments, shall then be transported directly to the accounting department or shall be maintained in locked storage until the master game report can be delivered to the accounting department. Upon meeting the signature requirements described in paragraph 12.15(5) “*e*,” the report shall not be available to any cashier’s cage personnel.

*g.* Unless the internal controls provide for the forwarding of the original requests and original slips from the cashier’s cage directly to the accounting department, the original requests and original slips recorded or to be recorded on the master game report shall be transported from the count room directly to the accounting department.

*h.* The originals and copies of the master game report, requests, slips, table inventory slips, and the test receipts from the currency counting equipment shall, on a gaming day basis in the accounting department, be:

- (1) Compared for agreement with each other on a test basis if the originals are received from the count room by persons with no recording responsibilities and, if applicable, to copies remaining in the dispenser or stored data.
- (2) Reviewed for the appropriate number and propriety of signatures on a test basis.
- (3) Accounted for by series numbers, if applicable.
- (4) Verified for proper calculation, summarization, and recording.
- (5) Recorded.
- (6) Maintained and controlled by the accounting department as a permanent accounting record.

**12.15(6) Slot machines.**

*a.* Currency shall not be removed from the count room after commencement of the count until the currency total has been verified and accepted by a cashier. At the conclusion of the count, all currency removed from the containers shall be counted by a cashier in the presence of a count team member prior to the recording of information on the slot drop sheet. The cashier shall attest to the accuracy of the amount of currency received from the slot machines by signature on the slot drop sheet, after which a count team member shall sign the slot drop sheet evidencing the fact that both the cashier and count team have agreed on the total amount of currency counted. The verified funds shall remain in the custody of the cashier.

*b.* The slot drop sheet and supporting documents shall be transported directly to the accounting department and shall not be available, except for signing, to any cashier's cage or slot personnel or shall be maintained in locked storage until they can be delivered to the accounting department.

*c.* The preparation of the slot drop sheet shall be completed by accounting employees as follows:

- (1) Compare the amount of currency counted and the drop meter reading for agreement for each slot machine.
- (2) Record the hopper fills for each slot machine.
- (3) Record for each slot machine the payouts and compare for agreement the payouts to the manual jackpot meter reading recorded on the slot meter sheet.
- (4) Calculate and record the win or loss for each slot machine.
- (5) Explain and report for corrections of apparent meter malfunctions to the slot department all significant differences between meter readings and amounts recorded.
- (6) Calculate statistics by slot machine.

*d.* The slot drop sheet, the slot meter sheet, payouts, and hopper fills shall be:

- (1) Compared for agreement with each other and to copies or stored data on a test basis.
- (2) Reviewed for the appropriate number and propriety of signatures on a test basis.
- (3) Accounted for by series numbers, if applicable.
- (4) Verified for proper calculation, summarization, and recording.
- (5) Recorded.
- (6) Maintained and controlled by accounting department employees.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—12.16(99F) Electronic wagering accounts.**

**12.16(1)** A facility may be allowed to offer electronic wagering accounts for patrons enrolled at that facility for use on premises at that facility. Prior to offering any electronic wagering accounts, the facility shall submit additional internal controls, approved by a commission representative in accordance with rule 491—12.3(99F), that include the following for operation of an account:

- a.* Limitation of one active account per individual player.
- b.* Details on how a player will be identified and the methods required to access funds in the account.
- c.* Process to easily and prominently impose limitations for wagering parameters including, but not limited to, deposits and wagers. Upon receipt, any self-imposed limitations must be employed

correctly and immediately as indicated to the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours. If the wagering account includes access to wagering account information, this process must include the capability to notify the player for self-imposed limitations.

*d.* Process to prohibit wagering by participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The operator must ensure that newly enrolled participants are paid in full for their account balance within a reasonable time provided that the operator acknowledges that the funds have cleared.

**12.16(2)** The following requirements apply to the maintenance of funds associated with a player account:

*a.* A facility shall not have access to funds in a player's account, except to debit the account for a wager made by the player, to remit funds to the player at the player's request, or as otherwise authorized by the commission.

*b.* Methods of transfer or deposit into a player's account shall be limited to currency transactions with a casino cashier, or transfers from a participating gaming machine or designated kiosk, unless otherwise approved by the commission. Direct transfers utilizing accounts with outside entities are permitted. Electronic wagering accounts shall not be funded with a credit card.

*c.* Positive player identification, including any personal identification number (PIN) entry or other approved secured methods, must be completed before the withdrawal of any moneys held by the facility.

*d.* It shall not be possible to transfer funds between two player accounts.

*e.* A facility shall provide a transaction log or account statement history at no cost to players upon request. Information provided shall include sufficient information to allow players to reconcile the statement or record against their own financial records and shall identify any device where a transaction occurred.

*f.* A facility shall not charge any fees for the registration, operation or maintenance of wagering accounts including, but not limited to, processing any deposits or withdrawals.

**12.16(3)** Abandoned player accounts under this rule are subject to Iowa Code chapter 556. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes any deposit or withdrawal, including activity initiated by the player to make a wager on a participating gaming device.

[ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6895C, IAB 2/22/23, effective 3/29/23]

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CHAPTER 13  
SPORTS WAGERING

**491—13.1(99F) Definitions.** As used in these rules, unless the context otherwise requires, the following definitions apply:

*“Administrator”* means the administrator of the racing and gaming commission or the administrator’s designee.

*“Advance deposit sports wagering”* means a method of sports wagering in which an eligible individual may, in an account established with a licensee under Iowa Code section 99F.7A, deposit moneys into the account and use the account balance to pay for sports wagering. Prior to January 1, 2021, an account must be established by an eligible individual in person with a licensee.

*“Advance deposit sports wagering operator”* means an advance deposit sports wagering operator licensed by the commission who has entered into an agreement with a licensee under Iowa Code section 99F.7A to provide advance deposit sports wagering.

*“Authorized sporting event”* means a professional sporting event, collegiate sporting event, international sporting event, or professional motor race event. “Authorized sporting event” does not include a race as defined in Iowa Code section 99D.2, a fantasy sports contest as defined in Iowa Code section 99E.1, minor league sporting event, or any athletic event or competition of an interscholastic sport as defined in Iowa Code section 9A.102.

*“Collegiate sporting event”* means an athletic event or competition of an intercollegiate sport as defined in Iowa Code section 9A.102.

*“Commission”* means the racing and gaming commission created under Iowa Code section 99D.5.

*“Designated sports wagering area”* means an area, as designated by a licensee and approved by the commission, in which sports wagering is conducted.

*“Eligible individual”* means an individual who is at least 21 years of age or older who is located within this state.

*“Facility”* means an entity licensed by the commission to conduct pari-mutuel wagering, gaming or sports wagering operations in Iowa.

*“International sporting event”* means an international team or individual sporting event governed by an international sports federation or sports governing body, including but not limited to sporting events governed by the international olympic committee and the international federation of association football.

*“Licensee”* means any person licensed under Iowa Code section 99F.7 or 99F.7A.

*“Minor league sporting event”* means a sporting event conducted by a sports league which is not regarded as the premier league in the sport as determined by the commission.

*“Professional sporting event”* means an event, excluding a minor league sporting event, at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

*“Sports wagering”* means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. “Sports wagering” does not include placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is a participant, or placing a wager on the performance of athletes in an individual international sporting event governed by the international olympic committee in which any participant in the international sporting event is under 18 years of age.

*“Sports wagering net receipts”* means the gross receipts less winnings paid to wagerers on sports wagering.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—13.2(99F) Conduct of all sports wagering.**

**13.2(1) Commission policy.** It is the policy of the commission to require that all industry participants conduct sports wagering in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for selecting, implementing, and maintaining suitable methods of operation rests with the facility, vendor, and advance deposit sports wagering operator.

Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including revocation.

**13.2(2) *Activities prohibited.*** A facility, vendor, or advance deposit sports wagering operator is expressly prohibited from the following activities:

*a.* Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.

*b.* Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility or advance deposit sports wagering operation including, but not limited to, payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.

*c.* Permitting cheating, failing to discover cheating that should have been discovered with reasonable inquiry, or failing to take action to prevent cheating.

*d.* Failing to conduct sports wagering operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or commission or acts as a detriment to the sports wagering industry.

*e.* Performing any type of sports wagering activity, at any time, that is contrary to the representation made to the commission, commission representatives, or the public.

*f.* Denying a commissioner or commission representative, upon proper and lawful demand, information, documents, or access to inspect any portion of the sports wagering operation.

**13.2(3) *Wagers.*** Wagers may only be made by persons 21 years of age or older and on activities authorized pursuant to Iowa Code chapter 99F which are approved by the commission.

**13.2(4) *Public notice.*** The public shall have access to the sports wagering rules, available wagers, odds or payouts, the payout period, and the source of the information used to determine the outcome of a sports wager. All licensees and advance deposit sports wagering operators shall require participants to follow the rules of play. The sports wagering rules shall be:

*a.* Displayed in the licensee's sports wagering area.

*b.* Posted on the internet site or mobile application used to conduct advance deposit sports wagering.

*c.* Included in any terms and conditions disclosure statements of the advance deposit sports wagering system.

**13.2(5) *Bond.*** A licensee shall post a bond or irrevocable letter of credit, at an amount determined by the commission, to the state of Iowa to guarantee that the licensee and any vendor or advance deposit sports wagering operator licensed in conjunction with the licensee faithfully makes the payments, keeps its books and records and makes reports, and conducts its gambling games and sports wagering in conformity with Iowa Code chapter 99F and the rules adopted by the commission.

**13.2(6) *Reserve.*** A reserve in the form of cash or cash equivalents segregated from operational funds, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof shall be maintained in the amount necessary to cover the outstanding vendor sports wagering liability and advance deposit sports wagering liability. An accounting of this reserve shall be made available for inspection to the commission upon request.

*a.* The method of reserve shall be submitted to and approved by the administrator prior to implementation.

*b.* Reserve calculation shall include the following: patron accounts, future wagers liability, unpaid wagers and pending withdrawals.

*c.* If, at any time, the licensee's total reserve is less than the amount required by the reserve calculation, the licensee shall notify the commission of this deficiency within 72 hours.

*d.* On a form provided by the commission, the controller or an employee of higher authority shall file a monthly attestation to the commission that the reserve funds have been safeguarded pursuant to this subrule. The attestation shall be provided to the commission no later than 15 days after the end of each month.

**13.2(7) *Internal controls.*** Licensees and advance deposit sports wagering operators shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before

sports operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of sports operations. The operator shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and advance deposit sports wagering operator and their employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that provide for the following:

*a.* To prohibit wagering by coaches, athletic trainers, officials, players, or other individuals who participate in an authorized sporting event in which wagers may be accepted.

*b.* To prohibit wagering by persons who are employed in a position with direct involvement with coaches, players, athletic trainers, officials, athletes or participants in an authorized sporting event in which wagers may be accepted.

*c.* To promptly report to the commission any criminal or disciplinary proceedings commenced against the licensee or its employees.

*d.* To promptly report to the commission, in a format approved by the administrator, any abnormal wagering activity or patterns that may indicate a concern about the integrity of an authorized sporting event or events, and any other conduct with the potential to corrupt a wagering outcome of an authorized sporting event for purposes of financial gain, including but not limited to match fixing, and suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification. Integrity-monitoring procedures shall also provide for the sharing of information with other licensees, other governing authorities, and accredited sports governing entities by participating in an integrity-monitoring association or group or by another method as approved by the administrator.

*e.* Written notification to the commission for any incident where there is a violation involving criminal activity, Iowa Code chapter 99F, a commission rule or order, or an internal control within 72 hours of detection. The licensee or advance deposit sports wagering operator shall provide a written report detailing the violation as required by and in a format approved by the administrator.

*f.* The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

*g.* User access controls for all sensitive and secure, physical and virtual, areas and systems within a sports wagering operation.

*h.* Treatment of problem gambling by:

(1) Identifying problem gamblers.

(2) Complying with the process established by the commission pursuant to Iowa Code section 99F.4(22) and 491—subrule 5.4(12).

(3) Cooperating with the Iowa gambling treatment program in creating and establishing controls.

(4) Including information on the availability of the gambling treatment program in a substantial number of the licensee's advertisements and printed materials.

*i.* Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.

**13.2(8) Revenue reporting.** Reports generated from the sports wagering system shall be made available as determined by the commission. The reporting system shall be capable of issuing reports by wagering day, wagering month, and wagering year. Wagering data shall not be purged unless approved by the commission. The reporting system shall provide for a mechanism to export the data for the purposes of data analysis and auditing or verification. The reporting system shall be able to provide, at a minimum, the following sports wagering information:

*a.* The date and time each event started and ended.

*b.* Total amount of wagers collected.

*c.* Total amount of winnings paid to players.

*d.* Total amount of wagers canceled, voided, and expired.

*e.* Commission or fees collected.

*f.* Total value of promotional play or free play used to purchase or execute a sports wager.

*g.* Event status.

- h.* Total amount held by the operator for the player accounts.
- i.* Total amount of wagers placed on future events.
- j.* Total amount of winnings owed but unpaid by the operator on winning wagers.
- k.* The date, time, stake amount, win amount and individual associated with each event where winnings are required to be reported on Internal Revenue Service form W-2G, as recorded by the reporting system.

**13.2(9) *Unclaimed winnings and abandoned accounts.*** Unclaimed winnings and abandoned accounts are subject to the following requirements:

- a.* Abandoned player accounts under this rule are subject to Iowa Code chapter 556.
- b.* Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes making a wager, making an account deposit, or withdrawing funds.
- c.* No licensee or advance deposit sports wagering operator shall charge an administration fee or maintenance fee for any inactive player account derived from state of Iowa residents at any time for any reason.

**13.2(10) *Annual audit.*** If a vendor is conducting sports wagering for a casino licensee, an audit of the sports wagering operations for the vendor or parent company of the vendor shall be conducted by certified public accountants authorized to practice in the state of Iowa, and the audit shall be provided to the commission within 90 days of the vendor's fiscal year and meet the following conditions:

- a.* Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of sports wagering activities.
- b.* Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the vendor's fiscal year does not correspond to the calendar year.
- c.* Inclusion of a supplement schedule for all Iowa locations in which the vendor operates.
- d.* Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.
- e.* Availability, upon request, of an engagement letter for the audit between the vendor or parent company of the vendor and the auditing firm.

**13.2(11) *Revenue reports.*** Licensees and advance deposit sports wagering operators shall provide additional reports, as determined necessary by the administrator, that detail the revenue submission required by 491—paragraph 5.4(10)“*d.*” Reports shall be provided to the commission in a format approved by the administrator. The administrator shall provide written notice to any licensee if additional reports are determined necessary. In addition, the administrator shall provide adequate time to any licensee if a report needs to be created to satisfy this requirement.

**13.2(12) *Ticket payouts.*** A method shall be available for players to collect at any time during the facility's hours of operation winnings from wagers made in person at a facility. Winnings required to be reported on Internal Revenue Service Form W-2G are exempt from this requirement.

**13.2(13) *Records.*** Licensees shall provide all information requested by the commission. Access to this information shall be prompt, and copies of the information shall be delivered within seven days or less as ordered or requested by the commission. The licensees shall ensure all books and records and the retention of all books and records comply with 491—subrule 5.4(14). All records pertaining to wagers shall be available to allow for player complaint resolution. All records pertaining to the accounts of persons who registered or have account activity in Iowa shall be available to allow for audits and investigations.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; see Suspension note at end of chapter; ARC 5016C, IAB 4/8/20, effective 5/13/20; see Delay note at end of chapter; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23]

#### **491—13.3(99F) Approval of sports wagers.**

**13.3(1) *Approval.*** Prior to offering a sports wager, a facility or advance deposit sports wagering operator shall request that the administrator investigate and approve the sports wager for compliance with commission rules and any other standards as required by the commission. The administrator may require the facility or advance deposit sports wagering operator, at the facility's or operator's own expense, to provide additional information as deemed necessary to make a determination. Prior to approval, the

administrator may require a trial period of any sports wager offering. Once a sports wager is approved by the administrator, unless it is subsequently disapproved for any reason deemed appropriate by the administrator, the sports wager is available for all operators under the conditions approved and subject to subrule 13.3(2).

**13.3(2) *Sports wager submissions.*** Prior to conducting a sports wager approved pursuant to subrule 13.3(1), a licensee or advance deposit sports wagering operator shall submit proposals for the wager, including but not limited to wagering rules, payout information, source of the information used to determine the outcome of the sports wager, and any restrictive features of the wager. The sports wager submission, or requests for modification to an approved wager, shall be submitted in writing and approved by the administrator prior to implementation.

**13.3(3) *Sports promotional contests, tournaments, or promotional activities.*** Sports promotional contests, tournaments, or promotional activities may be permitted by the licensee, vendor, or advance deposit sports wagering operator providing the following:

*a.* Rules shall be made available to participants for review prior to registering. Rules shall include, at a minimum: all conditions registered players must meet to qualify to enter or advance through the event, available prizes or awards, fees, and distribution of prizes or awards based on specific outcomes.

*b.* Rules are followed. Changes to rules shall not be made after participants have registered.

*c.* Results shall be made available for the registered players to review at the same location at which or in the same manner in which players registered. Results shall include, at a minimum: name of the event, date of the event, total number of entries, amount of entry fees, total prize pool, and amount paid for each winning category.

*d.* Fees collected, less cash prizes paid, are subject to the wagering taxes pursuant to Iowa Code section 99F.11(4). In determining sports wagering net receipts, to the extent that cash prizes paid out exceed fees collected, the licensee or advance deposit sports wagering operator shall be deemed to have paid the fees for the participants.

*e.* Rules include terms and conditions. All emails or digital advertisements promoting contests, tournaments, and promotional activities shall include a link or other easily obtainable source that includes rules or terms and conditions.

*f.* There is compliance with all other federal, state, and local laws and rules outside of the commission's jurisdiction.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21]

**491—13.4(99F) Designated sports wagering area.** A floor plan identifying the designated sports wagering area, including the location of any device used to assist in the placement, resolution or collection of any sports wager, shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Designated wagering areas shall contain conspicuous signage which denotes that an individual must be at least 21 years of age to wager on sports. Exceptions to this rule must be approved in writing by the administrator. The sports wagering area is subject to compliance with 491—subrule 5.4(7).

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22]

**491—13.5(99F) Advance deposit sports wagering.**

**13.5(1) *Authorization to conduct advance deposit sports wagering.*** A licensee or advance deposit sports wagering operator shall receive specific authorization from the commission to conduct advance deposit sports wagering prior to conducting advance deposit sports wagering. The granting of an advance deposit sports wagering license or approval of any agreements between a licensee and an advance deposit sports wagering operator to conduct advance deposit sports wagering does not constitute authorization. Any entity authorized to conduct advance deposit sports wagering is expected to comply with all requirements of this chapter, except for rule 491—13.4(99F), and all other applicable federal, state, local, and commission requirements.

**13.5(2) Account registration.** A person must have an established account in order to place advance deposit sports wagers. The process for establishing an account is subject to the administrator's approval. An account may be established through on-site registration under procedures previously approved by the administrator, or through remote registration. To establish an account, an application for an account shall be signed or otherwise authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth, and any other information required by the administrator. The account registration process shall also include:

a. Age verification to prevent persons under the legal age for sports wagering from establishing an account.

b. Player verification of legal name, physical address, and age to correctly identify account holders.

c. Verification that the player is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

d. Availability and acceptance of a set of terms and conditions that is also readily accessible to the player before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

(1) Explanation of rules in which any unrecoverable malfunctions of hardware/software are addressed including, but not limited to, if the unrecoverable malfunction, wagering event cancellation, or other catastrophic malfunction results in the voiding of any wagers.

(2) Procedures to deal with interruptions caused by the suspension of data flow from the network server during an event.

(3) Specifications advising players to keep their account credentials secure.

(4) Statement that no underage individuals are permitted to participate in wagering.

(5) Explanation of conditions under which an account is declared inactive and actions undertaken on the account once this declaration is made.

e. Availability and acceptance of a privacy policy that is also readily accessible to the player before and after registration and noticed when updated and that includes, at a minimum, the following:

(1) Statement of information that is collected, the purpose for information collection, and the conditions under which information may be disclosed.

(2) Statement that any information obtained in respect to player registration or account establishment must be done in compliance with the privacy policy.

(3) Requirement that any information about player accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.

(4) Requirement that all player information must be securely erased from hard disks, magnetic tapes, solid state memory, and other devices before the device is properly disposed of by the licensee. If erasure is not possible, the storage device must be destroyed.

f. If an advance deposit sports wagering operator has an agreement with more than one licensee, the advance deposit sports wagering operator shall submit an agreement to the administrator that indicates the manner in which customer net receipts shall be assigned with its licensee partners. The agreement shall include all partnering licensees and their respective qualified sponsoring organizations, and the net receipts shall be allocated using one of the following methods:

(1) Make available an option for new remotely registered customers to select the licensee at which net receipts are assigned.

(2) Allocate new remotely registered customer net receipts to the licensee which is located nearest to the customer's principal residential address.

(3) Distribute all customer receipts evenly between all licensees for which an agreement exists.

(4) An alternative allocation agreement that complies with local, state and federal law.

The agreement shall be made available for public inspection.

**13.5(3) Operation of an account.** The advance deposit sports wagering operator or a licensee shall submit controls, approved by the commission, that include the following for operating an account:

a. Specific procedures and technology partners to fulfill the requirements set forth in subrule 13.5(2).

b. Location detection procedures to reasonably detect and dynamically monitor the location of a player attempting to place any wager. A player outside the permitted boundary shall be rejected, and the player shall be notified. The confidence radius shall be entirely located within the permitted boundary.

c. Specific controls set forth in subrule 13.2(7).

d. Limitation of one active account, per individually branded website, at a time unless otherwise authorized by the commission.

e. Authentication for log in through a username and password or other secure alternative means as authorized by the commission. Processes for retrieving lost usernames and passwords shall be available, secure, and clearly disclosed to the player. Players shall be allowed to change their passwords.

f. Immediate notification to the player when changes are made to any account used for financial transactions or to registration information or when financial transactions are made unless other notification preferences are established by the player.

g. Process to immediately notify a player following an unusual login attempt. In the event that the unusual login attempt constitutes suspicious activity or if other suspicious activity is detected, an account shall be locked. A multifactor authentication process must be employed for the account to be unlocked.

h. Process for players to easily impose limitations or notifications for wagering parameters including, but not limited to, deposits and wagers. Self-imposed limitations must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

i. Process for players to easily self-exclude from wagering for a specified period of time and indefinitely. Self-exclusions must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the advance deposit sports wagering operator or licensee must ensure that the player is paid in full for the player's account balance within a reasonable time provided that the advance deposit sports wagering operator or licensee acknowledges that the funds have cleared. Players must be easily and obviously directed via a link to exclude themselves pursuant to Iowa Code section 99F.4(22). This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

j. Process to review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The operator must ensure that players are paid in full for their account balance within a reasonable time provided that the operator acknowledges that the funds have cleared.

k. Provide for an easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be addressed by the advance deposit sports wagering operator or licensee.

**13.5(4) Account funds.** The following requirements apply to the maintenance of funds associated with a player account:

a. Positive player identification, including any personal identification number (PIN) entry or other approved secure methods, must be completed before the withdrawal of any moneys held by the advance deposit sports wagering operator or licensee can be made.

b. Payments from an account are to be paid directly to an account with a financial institution in the name of the player or made payable to the player and forwarded to the player's address or through another method that is not prohibited by state or federal law.

c. An advance deposit sports wagering operator or licensee must have in place security or authorization procedures to ensure that only authorized adjustments can be made to player accounts and that changes are auditable.

d. It shall not be possible to transfer funds between two player accounts.

e. An advance deposit sports wagering operator or licensee shall provide a transaction log or account statement history at no cost to players upon request. Information provided shall include sufficient information to allow players to reconcile the statement or log against their own financial records.

*f.* Requests for withdrawals shall not be unreasonably withheld and shall be completed in a timely manner.

*g.* An advance deposit sports wagering operator or licensee shall provide a fee-free method for players to deposit or withdraw funds from player accounts.

*h.* If the method of reserve utilized to comply with subrule 13.2(6) is not in the form of cash or cash equivalents segregated from operational funds, an advance deposit sports wagering operator or licensee shall segregate player account funds from operational funds.

**13.5(5) *Annual audit.*** An audit of the advance deposit sports wagering operations for the advance deposit sports wagering operator or licensee or parent company of the advance deposit sports wagering operator or licensee shall be conducted by certified public accountants authorized to practice in the state of Iowa and provided to the commission within 90 days of the licensee's fiscal year and meet the following conditions:

*a.* Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of advance deposit sports wagering activities.

*b.* Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the advance deposit sports wagering operator's or licensee's fiscal year does not correspond to the calendar year.

*c.* Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.

*d.* Availability, upon request, of an engagement letter for the audit between the advance deposit sports wagering operator or licensee or parent company of the advance deposit sports wagering operator or licensee and the auditing firm.

*e.* Inclusion of a supplemental schedule for Iowa operations. A supplemental schedule shall include a breakdown of advance deposit sports wagering activities by each Iowa casino in which there is an agreement. The supplemental schedule provided to satisfy this requirement may be unaudited; however, the top financial officer of the company shall provide a statement attesting to the accuracy of the information provided to the commission.

**13.5(6) *Wagers.*** An advance deposit sports wagering operator shall display a player's wagers in a readily accessible manner.

**13.5(7) *Expiration or termination of an Iowa Code section 99F.7A operating agreement.*** In the event an advance deposit sports wagering operating agreement between a licensee under Iowa Code section 99F.7A and another entity expires, terminates, or is no longer valid, notice of termination must be given to the commission and all customers affiliated with the licensee. A customer shall be given an opportunity to close an account. If the advance deposit sports wagering operator has an operating agreement with other licensees in the state of Iowa, the customer shall have the option to select another partner licensee to which their net receipts shall be assigned, or the customer's net receipts shall be assigned to any remaining partner licensees in accordance with an agreement submitted to the administrator pursuant to paragraph 13.5(2) "*f.*"

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23]

#### **491—13.6(99F) Testing.**

**13.6(1) *Initial testing.*** All equipment and systems integral to the conduct of sports wagering and advance deposit sports wagering shall be tested and certified for compliance with commission rules and the standards required by a commission-designated independent testing laboratory. Certification and commission approval must be received prior to the use of any equipment or system to conduct sports wagering. The commission may designate more than one independent testing laboratory.

**13.6(2) *Change control.*** The licensees and advance deposit sports wagering operators shall submit change control processes that detail evaluation procedures for all updates and changes to equipment and systems to the administrator for approval at least 30 days prior to operation. These processes shall include, at a minimum, descriptions of the following areas of licensee operations:

- a. Process to classify all changes according to organizational risk.
- b. Process to designate whether changes must be submitted to an independent testing laboratory for review and certification.
- c. Process for emergency change determination and implementation.
- d. Process to log or note changes. Must include the details logged for each change, including but not limited to the following areas:
  - (1) Date and time of change or proposed date and time of change.
  - (2) Basic description of changes to be implemented.
  - (3) Change classification of change or changes, determined in accordance with the process established by paragraph 13.6(2)“a.” If emergency designation is separate from other change classifications, this shall also be included in the log or note.
  - (4) Identification of whether a change was submitted to an independent testing laboratory, and the certification report number of any testing.
- e. Process to maintain logs or notify the commission of changes.

**13.6(3) Annual testing.**

a. A system integrity and security risk assessment shall be performed annually on the advance deposit sports wagering system.

(1) The testing organization must be independent of the licensee and shall be qualified by the administrator.

(2) The system integrity and security risk assessment shall be completed no later than March 31 of each year.

(3) Results from the risk assessment shall be submitted to the administrator no later than 60 days after the assessment is completed. Results shall include a remediation plan to address any risks identified during the risk assessment.

(4) The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

(5) The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

b. At the discretion of the administrator, additional assessments or specific testing criteria may be required.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—13.7(99F) Licensing.**

**13.7(1) Application and payment of fee.** The commission shall, upon payment of an initial license fee of \$45,000 and submission of an application consistent with the requirements of Iowa Code section 99F.6, issue a license to conduct sports wagering to a facility.

**13.7(2) Application procedure for a facility.** Application for a license for a facility to conduct sports wagering shall be made to the commission. In addition to the application, the following must be completed and presented when the application is filed:

a. Name of the entity to be licensed by the commission to conduct sports wagering operations in Iowa.

b. Disclosure of agreements with entities to manage or operate sports wagering with or on behalf of the facility.

c. Disclosure of operating agreements for up to two, or three if authorized by the commission, individually branded internet sites to conduct advance deposit wagering for the facility.

d. Compliance with Iowa Code section 99F.6(4)“a”(2) and (3) requirements for qualified sponsoring organizations or horse racing purses.

e. A bond or irrevocable letter of credit on behalf of the facility in an amount to be determined by the commission.

*f.* A bank check, cashier's check, or wire transfer made payable to Iowa Racing and Gaming Commission for \$45,000 for an initial license or \$10,000 for a renewal license.

**13.7(3) *Application procedure for an advance deposit sports wagering operator.*** Application for a license for an advance deposit sports wagering operator with an agreement with a facility shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

*a.* Disclosure of ownership interest, directors, or officers of applicant.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, the term "beneficial interest" includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph 13.7(3) "a"(1) above.

*b.* Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

*c.* A copy of each of the following:

(1) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

(2) Agreement with facility to operate or manage the advance deposit sports wagering operation.

*d.* Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

*e.* The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, or professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

*f.* Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

*g.* Public disclosure is made for the benefit of the public, and documents pertaining to the ownership filed with the administrator shall be available for public inspection in accordance with 491—Chapter 3.

**13.7(4) *Supplementary information.*** Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the requested information within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

**13.7(5) *Temporary license certificates.***

*a.* A temporary license certificate may be issued at the discretion of the administrator.

*b.* Any temporary license certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue. Failure to obtain a permanent license within the designated time may result in revocation of license eligibility, fine, or suspension.

**13.7(6) *Withdrawal of application.*** A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

**13.7(7) *Record keeping.***

*a.* Record storage required. Licensees and advance deposit sports wagering operators shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and advance deposit sports wagering operators and any of their customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee and advance deposit sports wagering operator, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees and advance deposit sports wagering operators under these rules.

*b.* Record retention. Records other than those listed in subrule 13.2(8) shall be retained as required by 491—subrule 5.4(14).

**13.7(8) *Violation of laws or regulations.*** Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee or advance deposit sports wagering operator, or any combination of the above. The commission has the discretion to suspend mobile gaming operations of its licensees by written order if necessary.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21]

These rules are intended to implement Iowa Code chapters 99D and 99F.

[Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]<sup>1</sup>

[Filed ARC 5016C (Amended Notice ARC 4807C, IAB 12/18/19; Notice ARC 4617C, IAB 8/28/19), IAB 4/8/20, effective 5/13/20]<sup>2</sup>

[Filed ARC 5422C (Notice ARC 5269C, IAB 11/18/20), IAB 2/10/21, effective 3/17/21]

[Filed ARC 6169C (Notice ARC 6056C, IAB 11/17/21), IAB 2/9/22, effective 3/16/22]

[Filed ARC 6895C (Notice ARC 6610C, IAB 11/2/22), IAB 2/22/23, effective 3/29/23]

<sup>1</sup> Applicability of paragraph 13.2(7)“i” suspended until the adjournment of the 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held August 12, 2019. Suspension superseded by adoption of paragraph 13.2(7)“i” in ARC 5016C, effective 5/13/20.

<sup>2</sup> Applicability of paragraph 13.2(7)“i” delayed until the adjournment of the 2021 session of the General Assembly by the Administrative Rules Review Committee at its meeting held May 8, 2020.



CHAPTER 14  
FANTASY SPORTS CONTESTS

**491—14.1(99E) Definitions.** As used in these rules, unless the context otherwise requires, the following definitions apply:

*“Administrator”* means the administrator of the racing and gaming commission or the administrator’s designee.

*“Applicant”* means an internet fantasy sports contest service provider applying for a license to conduct internet fantasy sports contests under this chapter.

*“Commission”* means the state racing and gaming commission created under Iowa Code section 99D.5.

*“Entry fee”* means cash or cash equivalent that is required to be paid by an internet fantasy sports contest player to an internet fantasy sports contest service provider in order to participate in a fantasy sports contest.

*“Fantasy sports contest”* or *“contest”* means a fantasy or simulated game or contest in which:

1. The fantasy sports contest operator is not a participant in the game or contest;
2. The value of all prizes and awards offered to winning participants are established and made known to the participants in advance of the contest;
3. All winning outcomes reflect the relative knowledge and skill of the participants;
4. The outcome shall be determined by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
5. No winning outcome is solely based on the score, point spread, or any performance or performances of any single actual team or solely on any single performance of an individual athlete or player in any single actual event.

*“Fantasy sports contest service provider”* means a person, including a licensee under Iowa Code chapter 99D, 99E or 99F, who conducts an internet fantasy sports contest as authorized by this chapter.

*“Highly experienced player”* means a person who has entered more than 1,000 contests conducted by a single fantasy sports contest service provider or has won more than three fantasy sports contest prizes of \$1,000 or more from a single fantasy sports contest service provider. A fantasy sports contest provider may declare other players a “highly experienced player” so long as the provider’s criteria for declaration would include players previously declared a “highly experienced player” by the provider.

*“Internal controls”* means the fantasy sports contest service provider’s system of internal controls.

*“Licensee”* means any person licensed under Iowa Code section 99E.5 to conduct internet fantasy sports contests.

*“Location percentage”* means, for each internet fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, equal to the total charges and fees collected from all internet fantasy sports contest players located in this state divided by the total charges and fees collected from all participants in the internet fantasy sports contest.

*“Net revenue”* means an amount equal to the total entry and administrative fees collected from all participants entering fantasy sports contests less winnings paid to participants in the contest, multiplied by the location percentage.

*“Player”* or *“customer”* means a person who is at least 21 years of age and participates in an internet fantasy sports contest operated by an internet fantasy sports contest service provider.

*“Prize”* means anything of value, including cash or a cash equivalent, contest credits, merchandise or entry to another contest in which a prize may be awarded.

*“Script”* means a list of commands that a fantasy sports-related computer program can execute and is created by fantasy sports players, or by third parties for the use of all players, to automate processes on a fantasy sports contest internet platform.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

**491—14.2(99E) Application for fantasy sports contest service provider license and licensing.** A fantasy sports contest service provider must be licensed by the commission to offer an internet fantasy

sports contest under Iowa Code chapter 99E. Any individuals who are required to be occupationally licensed by the commission shall comply with the license requirements of Iowa Code section 99E.5 and rules 491—6.2(99D,99E,99F,252J) to 491—6.13(99D,99F,272D). Occupational licensees are also subject to 491—Chapter 4.

**14.2(1) *Licensing standards.*** Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees and integrity of financial backers. For the purposes of this rule, the term “applicant” includes each member of the board of directors or other governing body of an applicant.

*a.* The commission shall not grant a license to an applicant if there is substantial evidence that any of the following apply:

(1) A license issued to the applicant to conduct internet fantasy sports contests in another jurisdiction has been revoked, or a request for a license to conduct internet fantasy sports contests in another jurisdiction has been denied, by an entity licensing persons to conduct such contests in that jurisdiction.

(2) The applicant has not demonstrated financial responsibility sufficient to adequately meet the requirements of the enterprise proposed.

(3) The applicant does not adequately disclose the true owners of the enterprise proposed.

(4) The applicant has knowingly made a false statement of a material fact to the commission.

(5) The applicant has failed to meet a monetary obligation in connection with conducting an internet fantasy sports contest.

(6) The applicant is not of good repute and moral character or the applicant has pled guilty to, or has been convicted of, a felony.

(7) Any member of the board of directors or governing body of the applicant is not 21 years of age or older.

*b.* A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

**14.2(2) *Application procedure.*** Application for an internet fantasy sports contest service provider license shall be made to the commission on the form prescribed and published by the commission. In addition to the application, the following must be completed and presented when the application is filed:

*a.* Disclosure of ownership interest, directors, or officers of applicant.

*b.* The identity and date of birth of each member of the board of directors or other governing body of the applicant.

*c.* The identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require. For purposes of this rule, the term “beneficial interest” includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

*d.* For ownership interests of less than 5 percent, the administrator may request a list of these interests. At a minimum, the list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subrule 14.2(1).

*e.* A list of employees of the aforementioned who may be conducting business directly or indirectly on behalf of the applicant in the state of Iowa.

*f.* A bond or irrevocable letter of credit on behalf of the applicant or other satisfactory evidence, as determined by the commission, of a safe and reliable means of fulfilling the applicant’s obligations to customers and the state of Iowa in an amount determined by the commission.

**14.2(3) *Investigative fee.***

a. Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning the investigation.

b. Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

**14.2(4) Application fee.** A bank or cashier's check shall be made payable to Iowa Racing and Gaming Commission for \$5,000.

**14.2(5) Reporting of changes.** Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

**14.2(6) Ineligibility.** The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, or professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

**14.2(7) Disclosure.** Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

**14.2(8) Public disclosure.** Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

**14.2(9) Supplementary information.** Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the requested information within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

**14.2(10) Requirements placed upon applicants and licensees.** For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

#### **491—14.3(99E) Temporary license certificates.**

**14.3(1)** A temporary license certificate may be issued at the discretion of the administrator.

**14.3(2)** Any temporary license certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue. Failure to obtain a permanent license within the designated time may result in revocation of license eligibility, fine, or suspension.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—14.4(99E) Withdrawal of application.** A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

#### **491—14.5(99E) Fees.**

**14.5(1) Initial license.** Once the commission is satisfied that the requirements of this chapter have been met, an applicant will be granted an initial license for up to three years.

**14.5(2) Annual license fee.** After the initial licensing period, a licensee shall pay an annual fee of \$1,000 for licensees with a yearly adjusted gross revenue under \$150,000 or \$5,000 for licensees with a yearly adjusted gross revenue of \$150,000 or greater. The administrator shall set the time period for determining a licensee's adjusted gross revenue. Licenses must be renewed annually in a manner established by the commission.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

#### **491—14.6(99E) Taxes.**

**14.6(1)** The licensee shall pay a tax rate pursuant to Iowa Code section 99E.6 on adjusted revenue from fantasy sports contests. "Adjusted revenue" means the amount equal to the total charges and fees collected from all participants entering the fantasy sports contest less winnings paid to participants in the contest, multiplied by the location percentage defined in Iowa Code section 99E.1. Charges and fees returned to participants due to a participant withdrawing the participant's entry from a fantasy sports contest shall not be considered when calculating the adjusted revenue. Contests resulting in negative adjusted revenue shall be considered promotional in nature and cannot be used to offset taxes owed pursuant to Iowa Code section 99E.6.

**14.6(2)** Voided and canceled transactions are not considered receipts for the purpose of this calculation.

**14.6(3)** Any offering used to directly participate in a contest shall be considered receipts for the purpose of this calculation.

**14.6(4)** Any other fee collected to participate in a fantasy sports contest shall be subject to the wagering tax pursuant to Iowa Code section 99E.6.

**14.6(5)** All moneys collected for and owed to the state of Iowa under Iowa Code chapter 99E for the payment of fantasy sports contests shall be accounted for and itemized on a monthly basis, in a format approved by the commission, by noon on Wednesday following a gaming week's end as defined by 491—subparagraph 5.4(10)"b"(1) in which the completed gaming week includes the last day of the month. All fantasy sports contest fees owed shall be received in the treasurer's office by 11 a.m. on the Thursday after accounting and itemization is due in the commission office.

**14.6(6)** Fantasy sports operators shall provide additional reports, as determined necessary by the administrator, that detail the taxes collected in accordance with this rule. Reports shall be provided to the commission in a format approved by the administrator. The administrator shall provide written notice to any licensee if additional reports are determined necessary. In addition, the administrator shall provide adequate time to any licensee if a report needs to be created to satisfy this requirement.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21]

**491—14.7(99E) Account registration.** A person must have an established account in order to participate in fantasy sports contests. To establish an account, an application for an account shall be authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth and any other information required by the commission. The account registration process shall also include:

**14.7(1)** Age verification to prevent persons under the legal age from participating in fantasy sports contests and establishing an account.

**14.7(2)** Customer verification of legal name, physical address and age to correctly identify account holders.

**14.7(3)** Verification that the customer is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

**14.7(4)** Availability and acceptance of a set of terms and conditions that are also readily accessible to the customer before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

a. Explanation of rules in which any unrecoverable malfunctions of hardware/software are addressed including, but not limited to, if the unrecoverable malfunction, fantasy sports event cancellation, or any other catastrophic malfunction results in the voiding of any contests.

b. Procedures to deal with interruptions caused by the suspension of data flow from the network server during a contest.

c. Specifications advising customers to keep their account credentials secure.

d. Statement that no underage individuals are permitted to participate in contests.

**14.7(5)** Availability and acceptance of a privacy policy that is also readily accessible to the customer before and after registration and noticed when updated that includes, at a minimum, the following:

a. Statement of information that is collected, the purpose for information collection and the conditions under which information may be disclosed.

b. Statement that any information obtained in respect to customer registration or account establishment must be done in compliance with the privacy policy.

c. Requirement that any information about customer accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.

d. Requirement that all customer information must be securely erased from hard disks, magnetic tapes, solid state memory and other devices before the device is properly disposed of by the licensee. If erasure is not possible, the storage device must be destroyed.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—14.8(99E) Fantasy sports contest service provider requirements.**

**14.8(1)** *Internal controls.* Licensees shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before fantasy sports contest operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of contest operations. The service provider shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and its employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that comply with and provide for:

a. Prevention of employees of the internet fantasy sports contest service provider and relatives living in the same household of such employees from competing in any internet fantasy sports contest on the service provider's digital platform in which the service provider offers a prize to the public.

b. Verification that any fantasy sports contest player is 21 years of age or older.

c. Restriction of entries from coaches, officials, athletes, contestants, or other individuals who participate in a game or contest that is the subject of an internet fantasy sports contest in which the outcome is determined, in whole or in part, by the accumulated statistical results of a team of individuals in the game or contest in which they participate.

d. An easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be resolved by the licensee.

e. Measures used to determine the true identity, date of birth, and address of each player seeking to open an account.

f. Standards and procedures used to monitor fantasy sports contests to detect the use of unauthorized scripts and restrict players found to have used such scripts from further fantasy sports contests.

g. Prevention of unauthorized withdrawals from a registered player's account by the service provider or others.

h. How the service provider will accept wagers within the permitted boundary.

i. How the service provider will segregate fantasy sports contest player funds from operational funds.

j. Protection of a fantasy sports contestant's personal and private information.

**14.8(2) Records.** Licensees shall provide all information requested by the commission. Access to this information shall be prompt, and copies of the information shall be delivered within seven days or less as ordered or requested by the commission. The licensees shall ensure all books and records and the retention of all books and records comply with 491—subrule 5.4(14). All records pertaining to contests shall be available to allow for player complaint resolution. All records pertaining to the accounts of persons who registered or have account activity in Iowa shall be available to allow for audits and investigations.

**14.8(3) Reporting.** The licensee shall provide prompt notification of any facts which the licensee has reasonable grounds to believe indicate a violation of law or commission rule committed by licensees, their key persons, or their employees, including without limitation the performance of licensed activities different from those permitted under their license. The licensee is also required to provide a detailed written report within seven business days, or a time frame otherwise approved by the administrator, from the discovery for any of the following:

- a. Criminal or disciplinary proceedings commenced against the service provider or its employees in connection with its operations;
- b. Abnormal contest activity or patterns that may indicate a concern about the integrity of an internet fantasy sports contest;
- c. Any other conduct with the potential to corrupt an outcome of an internet fantasy sports contest for purposes of financial gain, including but not limited to match fixing;
- d. Suspicious or illegal internet fantasy sports contest activities, including the use of funds derived from illegal activity, deposits of money to enter an internet fantasy sports contest to conceal or launder funds derived from illegal activity;
- e. The use of agents to enter an internet fantasy sports contest or use of false identification.

**14.8(4) Technical and testing requirements.**

a. *Initial testing.* All equipment and systems integral to the conduct of fantasy sports contests shall be tested and certified for compliance with commission rules and the standards required by a commission-designated independent testing laboratory. Certification and commission approval must be received prior to the use of any equipment or system to conduct a fantasy sports contest. The commission may designate more than one independent testing laboratory.

b. *Change control.* The fantasy sports contest service providers shall submit change control processes that detail evaluation procedures for all updates and changes to equipment and systems to the administrator for approval. These processes shall include details for identifying criticality of updates and determining of submission of updates to an independent testing laboratory for review and certification.

c. *Annual testing.*

(1) A system integrity and security risk assessment shall be performed annually on the fantasy sports contest system.

1. The testing organization must be independent of the licensee and shall be qualified by the administrator.

2. The system integrity and security risk assessment shall be completed no later than March 31 of each year. Results shall include a remediation plan to address any risks identified during the risk assessment.

3. Results from the risk assessment shall be submitted to the administrator no later than 60 days after the assessment is completed.

4. The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

5. The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

(2) At the discretion of the administrator, additional assessments or specific testing criteria may be required.

*d. Limit on number of websites and platforms.* A fantasy sports contest service provider is authorized to conduct no more than two websites or platforms maintained and operated by the service provider.

**14.8(5) Operating requirements.** A fantasy sports contest service provider shall ensure the following:

*a.* Players winning fantasy sports contests shall have winning funds deposited into their player account or be paid by other means approved by the administrator within 48 hours from the end of the contest. Players shall have a fee-free method to deposit or withdraw funds from their player account. If funds are unable to be placed in a player's account, the fantasy sports contest service provider shall mail the funds to the player's address on file within ten days.

*b.* Player withdrawal of funds maintained in the player account shall be completed within five business days of the request unless the licensed fantasy sports contest service provider believes, in good faith, that the player engaged in fraud or other illegal activity pursuant to Iowa Code chapter 99D, 99E or 99F.

*c.* Procedures allow for a player to close an account and to access the player's history, including all fantasy sports contests in which the player participated.

*d.* Employees of the licensee are prohibited from participation in any fantasy sports contest offered by the licensee in which a cash prize is offered to the public. This includes prohibiting relatives living in the same household as such employees from competing in any fantasy sports contests offered by any licensee.

*e.* Prohibition of the sharing of confidential information that could affect fantasy sports contest play with third parties until the information is made publicly available.

*f.* Players are allowed to voluntarily self-exclude in compliance with Iowa Code section 99F.4(22), and a fantasy sports contest service provider shall follow all resolutions associated with the process.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5423C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23]

#### **491—14.9(99E) Contest rules.**

**14.9(1)** Prior to conducting a new type of fantasy sports contest, a fantasy sports contest service provider shall submit proposed contest rules to the administrator. The contest submission shall be in writing and approved by the administrator prior to implementation. The administrator shall approve, deny, or request further information within three business days of submission. If the administrator takes no action within that period, the fantasy sports contest service provider may offer the requested contest unless the administrator issues a subsequent disapproval. Once a contest is approved, the contest is available for all fantasy sports contest service providers unless the contest format is subsequently disapproved by the administrator for any reason the commission deems appropriate. Fantasy sports contest service providers may offer minor variations of an approved contest type without seeking administrator approval. Minor variations include:

*a.* Offering the contest format for any sport, league, association or organization previously approved by the administrator for any fantasy sports contest type;

*b.* The size of the contest and number of entries permitted;

*c.* Nonmaterial changes to entry fee and prize structure;

*d.* The number of athletes that a contestant selects to fill a roster when completing an entry;

*e.* The positions that must be filled when completing an entry;

*f.* Adjustments to the scoring system; and

*g.* Adjustments to a salary cap.

**14.9(2)** Licensees are required to comply with and ensure the following:

*a.* Advertisements for contests and prizes offered by a licensee shall not target prohibited participants, underage persons, or self-excluded persons.

*b.* The values of all prizes and awards offered to winning players must be established and made known to the players in advance of the contest.

c. Introductory procedures for players are prominently displayed on the main page of the licensee's platform to explain contest play and how to identify a highly experienced player.

d. Identification of all highly experienced players in every fantasy sports contest by a symbol attached to the players' usernames, or by other easily visible means, on all platforms supported by the licensee.

e. Contests are not offered based on the performance of participants in high school or youth sports events.

f. Representations or implications about average winnings from contests shall not be unfair or misleading.

g. Prohibition of the use of unauthorized third-party scripts or unauthorized scripting programs for any contest and ensure that measures are in place to deter, detect, and prevent cheating to the extent reasonably possible. "Cheating" includes collusion and the use of cheating devices, including the use of software programs that submit entry fees or adjust the athletes selected by a player.

h. Prominent display of information about the maximum number of entries that may be submitted for that contest for all advertised fantasy sports contests.

i. Disclosure of the number of entries that a player may submit to each fantasy sports contest and provide reasonable steps to prevent players from submitting more than the allowable number.

j. Opportunity for players to file a patron dispute.

k. Conspicuously disclose the source of the data utilized in any results.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

#### **491—14.10(99E) Segregation account requirements and financial reserves.**

**14.10(1) Segregation.** Fantasy sports contest service providers shall segregate all fantasy sports contest player funds from operational funds.

**14.10(2) Financial reserves.** For the protection of the funds of contest participants held in paid fantasy sports accounts, the fantasy sports contest service provider shall maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof in the amount of the deposits in internet fantasy sports contest player accounts.

a. The method of reserve shall be submitted and approved by the commission prior to implementation.

b. The amount of the reserve shall be equal to, at a minimum, the sum of all registered players' funds held in player accounts originating in Iowa.

c. If, at any time, the licensee's total reserve is less than the amount required by the reserve calculation, the licensee shall notify the commission of this deficiency within 72 hours.

d. Each licensee shall continuously monitor and maintain a record of all player deposits and the licensee's cash reserves to ensure compliance with the cash reserves requirement.

e. The licensee shall provide the commission with documentation including the amount of deposits in players' accounts and the amount in cash reserves as of the last day of each month. The information is due by the fifteenth day of the month for the preceding month.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22]

**491—14.11(99E) Annual audit.** An audit of the fantasy sports contest operations for the licensee or parent company of the licensee shall be conducted by certified public accountants authorized to practice in the state of Iowa and provided to the commission within 180 days of the licensee's fiscal year and meet the following conditions:

**14.11(1)** Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of fantasy sports contest activities.

**14.11(2)** Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the licensee's fiscal year does not correspond to the calendar year.

**14.11(3)** Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.

**14.11(4)** Availability, upon request, of an engagement letter for the audit between the licensee or parent company of the licensee and the auditing firm.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—14.12(99E) Abandoned accounts.**

**14.12(1)** Abandoned player accounts under this rule are subject to Iowa Code chapter 556. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes entering a contest, making an account deposit, or withdrawing funds.

**14.12(2)** No internet fantasy sports contest service provider shall charge an administration fee or maintenance fee for any inactive player account derived from state of Iowa residents at any time for any reason.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

**491—14.13(99E) Problem gambling.**

**14.13(1)** The licensee shall adopt and implement the following:

*a.* Policies and procedures designed to identify compulsive play.

*b.* Policies and procedures designed to comply with the process established by the commission pursuant to Iowa Code section 99F.4(22).

*c.* Policies and procedures designed to cooperate with the Iowa gambling treatment program in creating and establishing controls.

*d.* Policies and procedures designed to make information available to customers concerning assistance for compulsive play in Iowa, including websites or toll-free numbers directing customers to reputable resources containing further information, which shall be free of charge.

*e.* A process for players to easily impose limitations or notifications for deposits and monetary participation in a contest. Limitations must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

*f.* A process for players to easily self-exclude for a specified period of time and indefinitely. Self-exclusions must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the licensee must ensure that the player is paid in full for the player's account balance within a reasonable time provided that the licensee acknowledges that the funds have cleared. Players must be easily and obviously directed via a link to exclude themselves pursuant to Iowa Code section 99F.4(22). This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

*g.* A process to review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The licensee must ensure that the player is paid in full for the player's account balance provided that the licensee acknowledges that the funds have cleared.

**14.13(2)** The licensee shall also include on the internet site or mobile application the statewide telephone number of the Iowa department of public health to provide problem gambling information and extensive responsible gaming features in addition to those described in Iowa Code section 99F.4(22).

**14.13(3)** Money forfeited by a voluntarily excluded person pursuant to Iowa Code section 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22]

**491—14.14(99E) Licensing of internet fantasy sports contest service providers.**

**14.14(1)** *Operation.* The internet fantasy sports contest service provider shall submit the following for commission approval:

*a.* Internal controls for the operation of the account.

*b.* A detailed description and certification of systems and procedures used by the internet fantasy sports contest service provider to validate the identity, age and location of licensee account holders and to validate the legality of wagers accepted.

*c.* Certification of secure retention of all records related to internet fantasy sports contests and accounts for a period of not less than three years or such longer period as specified by the commission.

*d.* Certification of prompt commission access to all records relating to account holder identity, age and location in hard-copy or standard electronic format acceptable to the commission.

*e.* Verification that the player is not on the statewide voluntary self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

**14.14(2) Record keeping.**

*a.* Record storage required. Internet fantasy sports contest service providers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99E.

(3) Financial records of all transactions with players and all other licensees under these regulations.

*b.* Record retention. The records listed in paragraph 14.14(2) “*a*” shall be retained as required by 491—subrule 5.4(14).

**14.14(3) Violation of laws or regulations.** Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above. The commission has the discretion to suspend fantasy sports contest operations of its licensees by written order if necessary.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

These rules are intended to implement Iowa Code chapters 99D, 99E and 99F.

[Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]

[Filed ARC 5016C (Amended Notice ARC 4807C, IAB 12/18/19; Notice ARC 4617C, IAB 8/28/19), IAB 4/8/20, effective 5/13/20]

[Filed ARC 5422C (Notice ARC 5269C, IAB 11/18/20), IAB 2/10/21, effective 3/17/21]

[Filed ARC 5423C (Notice ARC 5315C, IAB 12/16/20), IAB 2/10/21, effective 3/17/21]

[Filed ARC 6169C (Notice ARC 6056C, IAB 11/17/21), IAB 2/9/22, effective 3/16/22]

[Filed ARC 6895C (Notice ARC 6610C, IAB 11/2/22), IAB 2/22/23, effective 3/29/23]

## BARBERS

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## CHAPTER 21

## LICENSURE

[Prior to 7/29/87, Health Department[470] Ch 152]

[Prior to 2/20/02, see 645—Chapter 20]

**645—21.1(158) Definitions.** For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Apprentice*” means a person who is at least 16 years of age, who is employed in an apprenticeable occupation, who is a resident of the state of Iowa, and who is registered in Iowa by the Office of Apprenticeship of the United States Department of Labor.

“*Apprenticeship program*” means a program registered by the Office of Apprenticeship of the United States Department of Labor which includes terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including the requirement for a written apprenticeship agreement between an apprentice and an active licensee in an active licensed barbershop as outlined in Iowa Code section 272C.16.

“*Apprenticeship sponsor*” means an entity operating an apprenticeship program or an entity in whose name an apprenticeship program is being operated, which is registered by or approved by the Office of Apprenticeship of the United States Department of Labor.

“*Board*” means the board of barbering.

“*Examination*” means any of the tests used by the board to determine minimum competency prior to the issuance of a barber or barber instructor license.

“*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 any person licensed to practice as a barber in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice as a barber to an applicant who is or has been licensed in another state.

“*NIC*” means the National-Interstate Council of State Boards of Cosmetology, Inc.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—21.16(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice barbering to an applicant who is currently licensed in another state and which state has a mutual agreement to license persons who have the same or similar qualifications to those required in Iowa.

“*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.

“*Testing service*” means a national testing service selected by the board.

[ARC 8349B, IAB 12/2/09, effective 1/6/10; ARC 5039C, IAB 5/6/20, effective 6/10/20; ARC 6396C, IAB 6/29/22, effective 8/3/22]

**645—21.2(158) Requirements for licensure.**

**21.2(1)** The following criteria shall apply to licensure:

*a.* Applicants shall complete a board-approved application form. Application forms may be obtained from the board's website ([www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure)) or directly from the board office. The application and licensure fees shall be sent to the Board of Barbering, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* Applicants shall present proof of completion of the tenth grade or equivalent education. In the event the applicant is a refugee or immigrant from a country where high school records no longer exist, the applicant shall be considered to have met this requirement when the applicant submits an affidavit attesting to the fact that the applicant has met the tenth-grade requirement.

*c.* Applicants shall provide an official copy of the transcript or diploma sent directly from the school to the board showing proof of completion of training at a barber school licensed by the board. If the applicant graduated from a school that is not licensed by the board, the applicant shall direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—23.8(158).

*d.* If the applicant has graduated from an apprenticeship program, the applicant must direct the United States Department of Labor to submit a certificate of completion. If the applicant completed all or part of a barbering apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while committed to the custody of the director of the department of corrections, the applicant shall request the department of corrections to provide an official transcript showing completion of all or part of the apprenticeship program.

*e.* Applicants shall pass both the NIC theory examination and the NIC practical examination with a score of 70 percent or better on each examination.

*f.* An applicant shall provide verification of license from the state in which the applicant has most recently been licensed as a barber, sent directly from the state to the Iowa board of barbering office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction.

*g.* Applications for a barber license must be received in the board office a minimum of five business days prior to the NIC practical examination.

*h.* Licensees who were issued their licenses within six months prior to renewal shall not be required to renew their licenses until the renewal month two years later.

*i.* Incomplete applications that have been on file in the board office for more than two years shall be:

- (1) Considered invalid and shall be destroyed; or
- (2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

**21.2(2)** Foreign-trained barbers shall:

*a.* Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, website [www.ierf.org](http://www.ierf.org) or email at [info@ierf.org](mailto:info@ierf.org); or World Education Services (WES) at (212)966-6311, electronically at [www.wes.org](http://www.wes.org) or by writing to WES, P.O. Box 745, Old Chelsea Station, New York, NY 10113-0745. The professional curriculum must be equivalent to that stated in these rules. An applicant shall bear the expense of the curriculum evaluation.

*b.* Provide a copy of the certificate or diploma awarded to the applicant from a barber school in the country in which the applicant was educated.

*c.* Receive a final determination from the board regarding the application for licensure.

**21.2(3)** Requirements for an instructor's license. Applicants shall:

- a.* Complete all requirements stated in paragraphs 21.2(1) "a" and "e";
- b.* Present proof of graduation from an accredited high school or the equivalent thereof;
- c.* Be licensed in the state of Iowa as a barber for not less than two years; and

*d.* Pass both the NIC instructor theory examination and the NIC instructor practical examination with a score of 70 percent or better on each examination.

**21.2(4)** Instructors who were issued their licenses within six months prior to renewal shall not be required to renew their licenses until the renewal month two years later.

**21.2(5)** 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 applicant. The applicant is responsible for requesting that the file be maintained.

**21.2(6)** An applicant who meets the requirements for an instructor's license except for the instructor examinations may apply for a temporary permit to be an instructor. The temporary permit shall be valid for a maximum of six months from the issue date of the permit and shall not be renewable.

**21.2(7)** Persons licensed under this chapter who provide apprenticeship programs must hold an active license sufficient to provide on-the-job training, must operate an actively licensed establishment and must comply with relevant United States Department of Labor laws and regulations for the operation of an apprenticeship program.

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 8349B, IAB 12/2/09, effective 1/6/10; ARC 5039C, IAB 5/6/20, effective 6/10/20; ARC 6396C, IAB 6/29/22, effective 8/3/22; ARC 6898C, IAB 2/22/23, effective 3/29/23]

#### **645—21.3(158) Examination requirements for barbers and barber instructors.**

**21.3(1)** *Theory examination.* Applicants shall contact the testing service directly to schedule the computer-based NIC theory examination. The fee for scheduling the written theory examination shall be paid directly to the testing service. This fee is not included in the licensure fee and practical examination fee identified in 645—subrules 5.2(1) and 5.2(4).

**21.3(2)** *Practical examination.* Applicants who have completed the application process and passed the NIC theory examination with a score of 70 percent or better shall be eligible to sit for the NIC practical examination administered by the board.

*a.* Application, supporting documentation, and licensure and practical examination fees required by the board shall be received in the board office at least five days prior to the scheduled NIC practical examination date.

*b.* The board shall send a notice of the date and time of the practical examination to the address on record.

*c.* Applicants are required to receive a passing score of 70 percent on the practical examination to be eligible for licensure.

*d.* Applicants shall be notified in writing of the result of the practical examination.

*e.* Applicants who fail to appear for the practical examination must request in writing or by telephone to reschedule the examination. Examination fees are not refundable, but the rescheduled examination fee may be waived upon the applicant's showing of good cause for missing the previously scheduled examination. Proof of good cause shall be submitted to the board office with the request to reschedule the examination. The applicant shall be required to pay the reexamination fee if the applicant does not appear for the subsequent examination.

*f.* Persons who do not attain the passing score may reapply to take the practical examination. The examination fee cannot be refunded, and the applicant shall be required to pay the reexamination fee.

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 8349B, IAB 12/2/09, effective 1/6/10]

#### **645—21.4 Reserved.**

**645—21.5(158) Licensure by endorsement.** The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who has held an active license under the laws of another jurisdiction for at least 12 months during the past 24 months and who:

**21.5(1)** Submits to the board a completed application and pays the licensure fee specified in 645—subrule 5.2(1).

**21.5(2)** Provides verification of license(s) from every state in which the applicant has been licensed as a barber, sent directly from the state(s) to the Iowa board of barbering 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.

**21.5(3)** Beginning August 1, 2010, completes one hour of Iowa barbering laws and administrative rules and sanitation.

**21.5(4)** Passes a national written and practical examination.

**21.5(5)** A person who is licensed in another jurisdiction but who is unable to satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 8349B, IAB 12/2/09, effective 1/6/10; ARC 5754C, IAB 7/14/21, effective 8/18/21]

**645—21.6** Reserved.

**645—21.7(158) Temporary permits to practice barbering.** An applicant must meet the following requirements:

1. The applicant is applying for initial licensure and is not licensed in another state.
2. The applicant has met the requirements for licensure except for passing the examinations required by the board. The temporary permit is valid from the date the application is approved for a maximum of six months and shall not be renewable.

[ARC 8349B, IAB 12/2/09, effective 1/6/10]

**645—21.8(158) Demonstrator's permit.** The board may issue a demonstrator's permit to a licensed barber for the purpose of demonstrating barbering to the public. The following criteria apply to the demonstrator's permit:

1. A demonstrator's permit shall be valid for a barbershop, person or an event. The location, purpose and duration shall be stated on the permit.
2. A demonstrator's permit shall be valid for no more than 10 days.
3. A completed application shall be submitted on a form provided by the board at least 30 days in advance of the intended use dates.
4. An application fee shall be submitted as set forth in these rules.
5. No more than four permits shall be issued to any applicant during a calendar year.

**645—21.9(158) License renewal.**

**21.9(1)** The biennial license renewal period for a license to practice barbering shall begin on July 1 of each even-numbered year and end on June 30 of each even-numbered year. All licensees shall renew on a biennial basis. 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.

**21.9(2)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—24.2(158). 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.
- c. Persons licensed to practice as barbers shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.
- d. Individuals who were issued a license within six months of the license renewal date will not be required to renew their licenses until the next renewal two years later.

**21.9(3)** 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

5.2(10). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**21.9(4)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. 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.

**21.9(5)** 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 barber in Iowa until the license is reactivated. A licensee who practices as a barber 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 7578B, IAB 2/25/09, effective 4/1/09; ARC 1680C, IAB 10/15/14, effective 11/19/14; ARC 5754C, IAB 7/14/21, effective 8/18/21]

**645—21.10** Reserved.

**645—21.11(158) Requirements for a barbershop license.**

**21.11(1)** A barbershop shall not operate unless the owner of the barbershop possesses a current barbershop license issued by the board. The following criteria shall apply to licensure:

*a.* The owner shall complete a board-approved application form. Application forms may be obtained from the board's website ([www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure)), or directly from the board office. The application and fee shall be submitted to the Board of Barbering, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* The barbershop shall meet the requirements for sanitary conditions established in 645—Chapter 22.

*c.* A barbershop license may be for a stationary barbershop or a mobile barbershop.

(1) Stationary barbershop. A stationary barbershop license shall be issued for a specific location. A change in location or site of a stationary barbershop shall result in the cancellation of the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(8). A change of address without change of actual location shall not be construed as a new site.

(2) Mobile barbershop. A mobile barbershop license shall be issued for a permanent physical address. The licensee is required to provide a permanent physical address for board correspondence. A mobile barbershop may operate in a legal parking spot or on private property, with the permission of the owner or the owner's designee, anywhere in the state of Iowa provided the mobile barbershop is operating in compliance with applicable federal and state transportation, environmental, and sanitary regulations, including those herein.

(3) Barbershop owner's contact information. The listed owner of either a stationary or mobile barbershop must update the board within 30 days of a change in contact information, which includes telephone number, email address, and mailing address.

*d.* A barbershop license is not transferable. A change in ownership of a barbershop shall result in the cancellation of the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(8).

*e.* A change in the name of a barbershop shall be reported to the board within 30 days of the name change.

*f.* Upon closure of a barbershop, the barbershop license shall be submitted to the board office within 30 days.

*g.* A barbershop that was issued a license within six months prior to renewal shall not be required to renew the license until the renewal month two years later.

**21.11(2)** 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. The candidate is responsible for requesting that the file be maintained.

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 5686C, IAB 6/16/21, effective 7/21/21]

**645—21.12(158) Barbershop license renewal.**

**21.12(1)** The biennial license renewal period for a barbershop license shall begin on July 1 of each even-numbered year and end on June 30 of the next even-numbered year.

**21.12(2)** Failure to receive the renewal application from the board shall not relieve the barbershop of the obligation to pay the biennial renewal fee on or before the renewal date.

**21.12(3)** The completed application and renewal fee shall be submitted to the board office before the license expiration date.

**21.12(4)** The barbershop shall be in full compliance with this chapter and 645—Chapter 22 to be eligible for license renewal.

**21.12(5)** A barbershop that is issued an initial license within six months prior to the renewal date will not be required to renew the license until the next renewal two years later.

**21.12(6)** Barbershop license late renewal. If the renewal fee and renewal application are received within 30 days after the license renewal expiration date, the late fee for failure to renew before expiration shall be charged.

**21.12(7)** Inactive barbershop license. If the renewal application and fee are not postmarked within 30 days after the license expiration date, the barbershop license is inactive. To reactivate a barbershop license, the reactivation application and fee shall be submitted to the board office.

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 1680C, IAB 10/15/14, effective 11/19/14; ARC 5754C, IAB 7/14/21, effective 8/18/21]

**645—21.13 to 21.15** Reserved.

**645—21.16(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**21.16(1)** Submit a reactivation application on a form provided by the board.

**21.16(2)** Pay the reactivation fee that is due as specified in 645—subrule 5.2(11).

**21.16(3)** Provide verification of current competence to practice as a barber 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 from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. 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 three hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

*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 from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in

any other jurisdiction. 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 three hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

**21.16(4)** Licensees who are barber instructors shall obtain an additional four hours of continuing education in teaching methodology.

**21.16(5)** Submit a sworn statement of previous barbering practice from an employer or professional associate, detailing places and dates of employment and verifying that the applicant has practiced barbering at least 2,080 hours or taught as the equivalent of a full-time faculty member for at least one of the immediately preceding years during the last two-year time period. Sole proprietors may submit the sworn statement on their own behalf.

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 8349B, IAB 12/2/09, effective 1/6/10; ARC 2722C, IAB 9/28/16, effective 11/2/16; ARC 6898C, IAB 2/22/23, effective 3/29/23]

**645—21.17(17A,147,272C) Reactivation of a barbershop license.** To apply for reactivation of an inactive license, a licensee shall:

**21.17(1)** Submit a reactivation application on a form provided by the board.

**21.17(2)** Pay the reactivation fee that is due as specified in 645—subrule 5.2(12).

**21.17(3)** Meet the requirements for sanitary conditions established in 645—Chapter 22.

[ARC 7578B, IAB 2/25/09, effective 4/1/09]

**645—21.18(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 645—21.16(17A,147,272C) prior to practicing as a barber in this state.

[ARC 7578B, IAB 2/25/09, effective 4/1/09]

**645—21.19(158) Mobile barbershops.** A mobile home, motor home, trailer, or other recreational vehicle may be used as a mobile barbershop if it complies with the following:

**21.19(1)** The owner shall possess a current mobile barbershop license issued by the board.

**21.19(2)** The owner shall complete a board-approved application.

**21.19(3)** The mobile barbershop's owner's telephone number, email address, and permanent address must be included on the mobile barbershop's application for licensure and must be updated and accurate.

**21.19(4)** No service may be performed on a client in a moving vehicle. Services shall be performed in a mobile barbershop that is parked in a legal parking spot.

**21.19(5)** Mobile barbershops must provide:

- a. A supply of hot and cold water;
- b. Adequate lighting;
- c. A floor surface in the service area that is nonabsorbent and easily cleanable;
- d. Work surfaces that are easily cleaned;
- e. Cabinets secured with safety catches wherein all chemicals shall be stored when the vehicle is moving;
- f. A first-aid kit that includes adhesive dressing, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

**21.19(6)** Mobile barbershops must comply with all rules in 645—Chapter 22, Infection Control for Barbershops and Barber Schools, except rules 645—22.5(158) through 645—22.7(158).

[ARC 5686C, IAB 6/16/21, effective 7/21/21]

These rules are intended to implement Iowa Code chapters 272C and 158.

[Filed 7/11/67]

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- [Filed ARC 6396C (Notice ARC 6259C, IAB 3/23/22), IAB 6/29/22, effective 8/3/22]
- [Filed ARC 6898C (Notice ARC 6459C, IAB 8/10/22), IAB 2/22/23, effective 3/29/23]

<sup>◇</sup> Two or more ARCs

<sup>1</sup> See Public Health Department[641], IAB

<sup>2</sup> Effective date of rule 567—20.10(158) delayed 70 days by the Administrative Rules Review Committee at its meeting held December 11, 1991; delayed until adjournment of the 1992 General Assembly at the Committee's meeting held February 3, 1992.



CHAPTER 24  
CONTINUING EDUCATION FOR BARBERS  
[Prior to 2/20/02, see 645—Chapter 23]

**645—24.1(158) 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 barbering.

“*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 completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

“*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.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a barber in the state of Iowa.

[ARC 6898C, IAB 2/22/23, effective 3/29/23]

**645—24.2(158) Continuing education requirements.**

**24.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as a barber in this state shall be required to complete a minimum of three hours of continuing education that meet the requirements of rule 645—24.3(158,272C). A minimum of one hour of the three hours shall be in the content areas of Iowa barbering laws and administrative rules and sanitation. A licensee who is a barber instructor shall obtain four hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the barber license.

**24.2(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. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of three hours of continuing education per biennium for each subsequent license renewal.

**24.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

**24.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. 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.

**24.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

[ARC 7578B, IAB 2/25/09, effective 4/1/09; ARC 8349B, IAB 12/2/09, effective 1/6/10; ARC 2722C, IAB 9/28/16, effective 11/2/16]

**645—24.3(158,272C) Standards.**

**24.3(1)** *General criteria.* A continuing education activity which meets all of the following criteria 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. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
  - (1) Date(s), location, course title, presenter(s);
  - (2) Number of program contact hours; and
  - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

**24.3(2) *Specific criteria.***

- a. Continuing education may be obtained by attending programs that meet the criteria in 24.3(1) approved or offered by the following:
    - (1) National, state or local barber associations.
    - (2) Barber schools and institutes.
    - (3) Universities, colleges or community colleges.
  - b. Continuing education credit offered for cosmetology continuing education credit will be accepted for barber continuing education credit.
  - c. Beginning August 1, 2010, one hour of continuing education per biennium must be specific to Iowa barbering laws and administrative rules and sanitation.
- [ARC 8349B, IAB 12/2/09, effective 1/6/10]

**645—24.4(158,272C) Audit of continuing education report.** Rescinded IAB 2/25/09, effective 4/1/09.

**645—24.5(158,272C) Automatic exemption.** Rescinded IAB 2/25/09, effective 4/1/09.

**645—24.6(158,272C) Continuing education exemption for disability or illness.** Rescinded IAB 2/25/09, effective 4/1/09.

**645—24.7(158,272C) Grounds for disciplinary action.** Rescinded IAB 2/25/09, effective 4/1/09.

**645—24.8(158,272C) Continuing education exemption for inactive practitioners.** Rescinded IAB 8/17/05, effective 9/21/05.

**645—24.9(158,272C) Continuing education exemption for disability or illness.** Rescinded IAB 8/17/05, effective 9/21/05.

**645—24.10(158,272C) Reinstatement of inactive practitioners.** Rescinded IAB 8/17/05, effective 9/21/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 158.

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<sup>◇</sup> Two or more ARCs

*CHIROPRACTIC*

CHAPTER 41	LICENSURE OF CHIROPRACTIC PHYSICIANS
CHAPTER 42	COLLEGES FOR CHIROPRACTIC PHYSICIANS
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CHAPTER 45	DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

CHAPTER 41

LICENSURE OF CHIROPRACTIC PHYSICIANS

[Prior to 7/24/02, see 645—40.10(151) to 645—40.13(151), 645—40.15(151) and 645—40.16(151)]

**645—41.1(151) Definitions.** The following definitions shall be applicable to the rules of the Iowa board of chiropractic:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the Iowa board of chiropractic.

“*Council on Chiropractic Education*” or “*CCE*” means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws. A copy of the standards may be requested from the Council on Chiropractic Education. CCE’s address and website may be obtained from the board’s website at [www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure).

“*Department*” means the Iowa department of public health.

“*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.

“*License*” means license to practice chiropractic in Iowa.

“*Licensee*” means any person licensed to practice as a chiropractic physician in Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice chiropractic to an applicant who is or has been licensed in another state and meets the criteria for licensure in this state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of chiropractic physicians 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.

“*NBCE*” means the National Board of Chiropractic Examiners. The mailing address and website address may be obtained from the board’s website at [www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure).

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—41.14(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means a license issued pursuant to the process outlined in rule 645—4.7(147) by which an Iowa license to practice chiropractic is issued to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of chiropractic to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in rule 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.

“*SPEC*” means Special Purposes Examination for Chiropractic, which is an examination provided by the NBCE that is designed specifically for utilization by state or foreign licensing agencies.

[ARC 2952C, IAB 2/15/17, effective 3/22/17]

**645—41.2(151) Requirements for licensure.**

**41.2(1)** Every applicant for licensure to practice chiropractic shall do all of the following:

*a.* Complete a board-approved application form. If the application is not completed according to the instructions, the application will not be reviewed by the board. Application forms may be obtained from the board's website ([www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure)) or directly from the Board of Chiropractic, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* Submit the appropriate fee to the Iowa Board of Chiropractic as stated in 645—subrule 5.4(1). The fee is nonrefundable.

*c.* Submit official copies of academic transcripts to the board directly from a chiropractic school accredited by the CCE and approved by the board. The transcript must display the date of graduation and the degree conferred.

*d.* Submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

*e.* Pass all parts of the NBCE examination as outlined in rule 645—41.3(151).

*f.* Submit a copy of the chiropractic diploma (no larger than 8½" × 11") from a chiropractic school accredited by the CCE and approved by the board.

**41.2(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.

**41.2(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. The candidate is responsible for requesting that the file be maintained.

**41.2(4)** Persons licensed to practice chiropractic shall keep their licenses publicly displayed in the primary place of practice.

**41.2(5)** Licensees are required to notify the board of chiropractic of changes in residence or place of practice within 30 days after the change of address occurs.

[ARC 9109B, IAB 10/6/10, effective 11/10/10; ARC 2952C, IAB 2/15/17, effective 3/22/17]

**645—41.3(151) Examination requirements.**

**41.3(1)** Applicants shall submit the application for the NBCE examination and the fee directly to the NBCE.

**41.3(2)** The following criteria shall apply for the NBCE:

*a.* Prior to July 1, 1973, applicants shall provide proof of being issued a basic science certificate.

*b.* After July 1, 1973, applicants shall provide proof of successful completion of the required examination from the NBCE. The required examination shall meet the following criteria:

(1) Examinations completed after July 1, 1973, shall be defined as the successful completion of Parts I and II of the NBCE examination.

(2) Examinations completed after August 1, 1976, shall be defined as the successful completion of Parts I, II and Physiotherapy of the NBCE examination.

(3) Examinations completed after January 1, 1987, shall be defined as the successful completion of Parts I, II, III and Physiotherapy of the NBCE examination.

(4) Examinations completed after January 1, 1996, shall be defined as satisfactory completion of Parts I, II, III, IV and Physiotherapy of the NBCE examination.

[ARC 2952C, IAB 2/15/17, effective 3/22/17]

**645—41.4(151) Educational qualifications.**

**41.4(1)** An applicant for licensure to practice as a chiropractic physician shall present an official transcript verifying graduation from a CCE-accredited and board-approved college of chiropractic.

**41.4(2)** Foreign-trained chiropractic physicians shall:

*a.* Provide an equivalency evaluation of their educational credentials by the International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City,

California 90231-3665; telephone (310)258-9451; website [www.ierf.org](http://www.ierf.org) or email at [info@ierf.org](mailto:info@ierf.org). The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

*b.* Provide a copy of the certificate or diploma awarded to the applicant from a chiropractic program in the country in which the applicant was educated.

*c.* Receive a final determination from the board regarding the application for licensure.  
[ARC 2952C, IAB 2/15/17, effective 3/22/17; ARC 6897C, IAB 2/22/23, effective 3/29/23]

#### **645—41.5(151) Temporary certificate.**

**41.5(1)** The board may issue a temporary certificate to practice chiropractic if the issuance is in the public interest. A temporary certificate may be issued at the discretion of the board to an applicant who demonstrates a need for the temporary certificate and meets the professional qualifications for licensure.

**41.5(2)** Demonstrated need. An applicant must establish that a need exists for the issuance of a temporary certificate and that the need serves the public interest. An applicant must submit information explaining the demonstrated need, the scope of practice requested by the applicant, and why a temporary certificate should be granted. An applicant may only meet the demonstrated need requirement by proving that the need meets one of the following conditions:

*a.* The applicant will provide chiropractic services in connection with a special activity, event or program conducted in this state;

*b.* The applicant will provide chiropractic services in connection with a state emergency as proclaimed by the governor;

*c.* The applicant previously held an unrestricted license to practice chiropractic in this state and will provide gratuitous chiropractic services as a voluntary public service; or

*d.* The applicant will provide chiropractic services in connection with an urgent need.

**41.5(3)** Professional qualifications. The applicant shall:

*a.* Submit the board-approved application form. Applications may be obtained from the board's website ([www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure)) or directly from the Board of Chiropractic, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* Provide verification of current active licensure in the United States sent directly to the board office from the state in which the applicant is licensed.

*c.* Submit proof of two years of full-time chiropractic practice within the immediately preceding two years.

*d.* Provide a copy of a chiropractic diploma (no larger than 8½" × 11") from a chiropractic school accredited by the CCE and approved by the board and submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

**41.5(4)** If the application is approved by the board, and the applicant submits the temporary certificate fee pursuant to 645—subrule 5.4(2), a temporary certificate shall be issued authorizing the applicant to practice chiropractic for one year to fulfill the demonstrated need for temporary licensure, as stated on the application and described in subrule 41.5(2).

**41.5(5)** An applicant or temporary certificate holder who has been denied a temporary certificate may appeal the denial pursuant to rule 645—4.10(17A,147,272C). A temporary certificate holder is subject to discipline for any grounds for which licensee discipline may be imposed.

**41.5(6)** A temporary certificate holder who meets all licensure conditions as specified in rule 645—41.2(151) may obtain a permanent license in lieu of the temporary certificate. To obtain a permanent license, the applicant shall submit any additional documentation required for permanent licensure that was not submitted as a part of the temporary certificate application. The applicant may receive fee credit toward the permanent licensure fee equivalent to the fee paid for the temporary certificate if the application for the permanent license and all required documentation are received by the board prior to the expiration of the temporary certificate.

[ARC 2952C, IAB 2/15/17, effective 3/22/17]

#### **645—41.6(151) Licensure by endorsement.**

**41.6(1)** An applicant who has been licensed to practice chiropractic under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office.

**41.6(2)** The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

- a. Submits to the board a completed application;
- b. Pays the licensure fee;
- c. Provides a copy of the diploma (no larger than 8½" × 11") along with an official copy of the transcript from a CCE-accredited and board-approved chiropractic school sent directly from the school to the board office;
- d. Shows evidence of successful completion of the NCBE examination as outlined in rule 645—41.3(151);
- e. Provides verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:
  - (1) Licensee's name;
  - (2) Date of initial licensure;
  - (3) Current licensure status; and
  - (4) Any disciplinary action taken against the license; and
- f. Holds or has held a current license and provides evidence of one of the following requirements:
  - (1) Completion of 40 hours of board-approved continuing education during the immediately preceding two-year period as long as the applicant had an active license within the last five years; or
  - (2) Practice as a licensed chiropractic physician for a minimum of one year during the immediately preceding two-year period; or
  - (3) The equivalent of one year as a full-time faculty member teaching chiropractic in a CCE-accredited chiropractic college for at least one of the immediately preceding two years; or
  - (4) Graduation from a board-approved chiropractic college within the immediately preceding two years from the date the application is received in the board office.
- g. If the applicant does not meet the requirements of paragraph 41.6(2) "f," the applicant shall submit the following:
  - (1) Evidence of satisfactory completion of 40 hours of board-approved continuing education during the immediately preceding two-year period; and
  - (2) Evidence of successful completion of the SPEC examination within one year prior to receipt of the application in the board office.

**41.6(3)** A person who is licensed in another jurisdiction but who is unable to satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[ARC 2952C, IAB 2/15/17, effective 3/22/17; ARC 4435C, IAB 5/8/19, effective 6/12/19; ARC 5759C, IAB 7/14/21, effective 8/18/21; ARC 6897C, IAB 2/22/23, effective 3/29/23]

**645—41.7** Reserved.

**645—41.8(151) License renewal.**

**41.8(1)** The biennial license renewal period for a license to practice as a chiropractic physician shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. 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.

**41.8(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 two years later.

**41.8(3)** A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—44.2(272C) and the mandatory reporting requirements of subrule 41.8(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, continuing education report form and renewal fee before the license expiration date.

**41.8(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 training in child abuse identification and reporting as required by Iowa Code section 232.69(3)"*b*" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 41.8(4)"*e*."

*b.* A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)"*b*" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 41.8(4)"*e*."

*c.* The course(s) shall be the curriculum provided by the Iowa department of human services.

*d.* The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 41.8(4)"*a*" and "*b*," 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 rule 645—4.14(272C).

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs 41.8(4)"*a*" to "*e*."

**41.8(5)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. 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.

**41.8(6)** A person licensed to practice as a chiropractic physician shall keep the license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

**41.8(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.14(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**41.8(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 chiropractor in Iowa until the license is reactivated. A licensee who practices as a chiropractor 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 9513B, IAB 5/18/11, effective 6/22/11; ARC 2952C, IAB 2/15/17, effective 3/22/17; ARC 4950C, IAB 2/26/20, effective 4/1/20; ARC 5759C, IAB 7/14/21, effective 8/18/21]

**645—41.9 to 41.13** Reserved.

**645—41.14(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**41.14(1)** Submit a reactivation application on a form provided by the board.

**41.14(2)** Pay the reactivation fee as specified in 645—subrule 5.4(5).

**41.14(3)** Provide verification of current competence to practice as a chiropractic physician 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 40 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of application for reactivation.

*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 40 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of application for reactivation; and

(3) Verification of passing the SPEC if the applicant does not have a current license and has not had an active license in the United States during three of the past five years.

[ARC 2952C, IAB 2/15/17, effective 3/22/17; ARC 4116C, IAB 11/7/18, effective 12/12/18; ARC 4435C, IAB 5/8/19, effective 6/12/19]

**645—41.15(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 rule 645—11.31(272C) and thereafter must apply for and be granted reactivation of the license in accordance with rule 645—41.14(17A,147,272C) prior to practicing as a chiropractic physician in this state.

[ARC 2952C, IAB 2/15/17, effective 3/22/17]

These rules are intended to implement Iowa Code chapters 17A, 147, 151 and 272C.

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[Filed 7/17/08, Notice 5/7/08—published 8/13/08, effective 9/17/08]<sup>o</sup>

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[Filed ARC 2952C (Notice ARC 2857C, IAB 12/7/16), IAB 2/15/17, effective 3/22/17]

[Filed ARC 4116C (Notice ARC 3943C, IAB 8/15/18), IAB 11/7/18, effective 12/12/18]

[Filed ARC 4435C (Notice ARC 4129C, IAB 11/21/18; Amended Notice ARC 4275C, IAB 2/13/19), IAB 5/8/19, effective 6/12/19]

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[Filed ARC 6897C (Notice ARC 6665C, IAB 11/16/22), IAB 2/22/23, effective 3/29/23]

◇ Two or more ARCs



*PHYSICIAN ASSISTANTS*

CHAPTER 326	LICENSURE OF PHYSICIAN ASSISTANTS
CHAPTER 327	PRACTICE 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 Accreditation Review Commission on Education for the Physician Assistant, or its successor, or, if accredited prior to 2001, either by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs.

“*Board*” means the board of physician assistants.

“*CME*” means continuing medical education.

“*Collaboration*” means consultation with or referral to the appropriate physician or other health care professional by a physician assistant as indicated by the patient’s condition; the education, competencies, and experience of the physician assistant; and the standard of care.

“*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 or opioid use disorder.

“*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*” or “*PA*” 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 more than 30 miles 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” does not apply to nursing homes, patient homes, hospital outpatient departments, outreach clinics, or any location at which medical care is incidentally provided, such as a diet center, free clinic, site for athletic physicals, or a jail facility.

“*Supervising physician*” means a physician who supervises the medical services provided by the physician assistant consistent with the physician assistant’s education, training, or experience 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; ARC 5177C, IAB 9/9/20, effective 10/14/20]

#### **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 from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. 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.

**326.4(7)** A person who is licensed in another jurisdiction but who is unable to satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

[ARC 5752C, IAB 7/14/21, effective 8/18/21; ARC 6896C, IAB 2/22/23, effective 3/29/23]

**645—326.5** Reserved.

**645—326.6(148C) Examination requirements.** The applicant for licensure as a physician assistant shall successfully pass the certifying examination conducted by the National Commission on Certification of Physician Assistants or a successor examination approved by the board of physician assistants.

[ARC 5177C, IAB 9/9/20, effective 10/14/20]

**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 training in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous three years, or condition(s) for waiver of this requirement as identified in paragraph 326.9(4) "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 training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 326.9(4) "e."

*c.* The course(s) shall be the curriculum provided by the Iowa department of human services.

*d.* The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 326.9(4) "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.

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs 326.9(4) "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. 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 renewal 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 renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.14(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; ARC 4952C, IAB 2/26/20, effective 4/1/20; ARC 5752C, IAB 7/14/21, effective 8/18/21]

**645—326.10 to 326.14** Reserved.

**645—326.15(148C,88GA,ch1020) 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." A person who meets the qualifications for licensure under Iowa Code chapter 148C

but does not possess a current license may use the title “PA” or “physician assistant” but may not act or practice as a physician assistant unless licensed under Iowa Code chapter 148C.  
[ARC 5177C, IAB 9/9/20, effective 10/14/20]

**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 Accreditation Review Commission on Education for the Physician Assistant or its successor, or, if accredited prior to 2001, either by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs.

This rule is intended to implement Iowa Code section 148C.2.  
[ARC 5177C, IAB 9/9/20, effective 10/14/20]

**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 5.

**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.

[ARC 5177C, IAB 9/9/20, effective 10/14/20]

**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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<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.



**REVENUE DEPARTMENT[701]**

Created by 1986 Iowa Acts, chapter 1245.

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[Prior to 12/17/86, Revenue Department[730]]  
[Prior to 11/2/22, see Revenue Department[701] Ch 38]

**701—300.1(422) Definitions.**

**300.1(1)** When the word “*department*” appears herein, the word refers to and is synonymous with the “Iowa department of revenue”; the word “*director*” is the “director of revenue” or the director’s authorized assistants and employees.

The administration of the individual income tax is a responsibility of the department. The department is charged with the administration of the individual income tax, fiduciary tax, withholding of tax and individual estimate declarations, subject always to the rules, regulations and direction of the director.

**300.1(2)** The term “*computed tax*” means the amount of tax remaining before deductions of the personal exemption credit and other credits in Iowa Code chapter 422, division II, and before the computation of the school district surtax and the emergency medical services income surtax.

**300.1(3)** The word “*taxpayer*” includes under this division:

- a. Every resident of the state of Iowa.
- b. Every part-year resident of the state of Iowa.
- c. Every estate and trust resident of this state whose income is in whole or in part subject to the state income tax.
- d. Nonresident individuals, estates and trusts (those with a situs outside of Iowa) receiving taxable income from property in Iowa or from business, trade, or profession or occupation carried on in this state.

**300.1(4)** The term “*fiduciary*” shall mean one who acts in place of or for the benefit of another in accordance with the meaning of the term defined in Iowa Code section 422.4. The term includes, but is not limited to, the executor or administrator of an estate, a trustee, guardian or conservator, or a receiver.

**300.1(5)** The term “*employer*” means those who have a right to exercise control as to the performance of services as defined in Iowa Code section 422.4.

**300.1(6)** The term “*employee*” means and includes every individual who is a resident, or who is domiciled in Iowa, or any nonresident, or corporation performing services within the state of Iowa, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. This includes officers of corporations, individuals, including elected officials performing services for the United States government or any agency or instrumentality thereof, or the state of Iowa, or any county, city, municipality or political subdivision thereof.

**300.1(7)** The term “*wages*” means any remuneration for services performed by an employee for an employer, including the cash value of all such remuneration paid in any medium or form other than cash. Wages have the same meaning as provided by the Internal Revenue Code as made applicable to Iowa income tax.

Wages subject to Iowa income tax withholding consist of all remuneration, whether in cash or other form, paid to an employee for services performed for the employer. For this purpose, the word “wages” includes all types of employee compensation, such as salaries, fees, bonuses, and commissions. It is immaterial whether payments are based on the hour, day, week, month, year or on a piecework or percentage plan.

Wages paid in any form other than money are measured by the fair market value of the goods, lodging, meals, or other consideration given in payment for services.

Where wages are paid in property other than money, the employer should make necessary arrangements to ensure that the tax is available for payment. Vacation allowances and back pay, including retroactive wage increases, are taxed as ordinary wages.

Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include them in their personal income tax returns.

Amounts paid specifically, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to these taxes. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowance are combined in a single payment.

Wages are to be considered as paid when they are actually paid or when they are constructively paid, that is, when they are credited to the account of, or set apart for the wage earner so that they may be drawn upon by the wage earner at any time, although not then actually reduced to possession.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

[Editorial change: IAC Supplement 11/2/22; ARC 6904C, IAB 2/22/23, effective 3/29/23]

## **701—300.2(422) Statute of limitations.**

### **300.2(1) *Periods of audit.***

*a.* The department has three years after a return has been filed or three years after the return became due, including any extensions of time for filing, whichever time is the later, to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitations does not apply in the instances specified in paragraphs “*b*,” “*c*,” “*d*,” “*e*,” “*f*” and “*g*.”

*b.* If a taxpayer fails to include in the taxpayer’s return items of gross income as defined in the Internal Revenue Code as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed, or within six years after the return became due, including any extensions of time for filing, whichever time is the later.

*c.* If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

*d.* If a taxpayer fails to file a return, the periods of limitations so specified in Iowa Code section 422.25 do not begin to run until the return is filed with the department.

*e.* While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

*f.* In addition to the periods of limitation set forth in paragraph “*a*,” “*b*,” “*c*,” “*d*,” or “*e*,” the department has six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination. Final disposition of any matter between the taxpayer and the Internal Revenue Service triggers the extension of the statute of limitations for the department to make an examination and determination, and the extension runs until six months after the department receives notification and a copy of the federal document showing the final disposition or final federal adjustments from the taxpayer. *Van Dyke v. Iowa Department of Revenue and Finance*, 547 N.W.2d 1. This examination and determination is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987). The notification shall be in writing in any form sufficient to inform the department of final disposition, and attached to the notification shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306. Any notification and copy of the federal document which is included in, made a part of, or mailed with a current year Iowa individual income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

*g.* In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to

such prior year of a net operating loss or net capital loss, the period shall be the period of limitation for the taxable year of the net operating loss or net capital loss which results in such carryback.

**300.2(2) Waiver of statute of limitations.** When the taxpayer and the department enter into an agreement to extend the period of limitation, interest continues to accrue on any deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

**300.2(3) Amended returns filed within 60 days of the expiration of the statute of limitations for assessment.** If a taxpayer files an amended return on or after April 1, 1995, within 60 days prior to the expiration of the statute of limitations for assessment, the department has 60 days from the date the amended return is received to issue an assessment for applicable tax, interest, or penalty.

This rule is intended to implement Iowa Code section 422.25.

[Editorial change: IAC Supplement 11/2/22]

**701—300.3(422) Retention of records.**

**300.3(1)** Every individual subject to the tax imposed by Iowa Code section 422.5 (whether or not the individual incurs liability for the tax) and every withholding agent subject to the provisions of Iowa Code section 422.16 shall retain those books and records as required by Section 6001 of the Internal Revenue Code and federal income tax regulation 1.6001-1(e) including the federal income tax return and all supporting federal schedules. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**300.3(2)** In addition, records relating to other deductions or additions to federal adjusted income and Iowa tax credits shall be retained so long as the contents may be material in the administration of the Iowa Code under the statutes of limitations for audit specified in Iowa Code section 422.25.

This rule is intended to implement Iowa Code sections 422.25 and 422.70.

[ARC 9104B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 11/2/22]

**701—300.4(422) Authority for deductions.** Whether and to what extent deductions shall be allowed depends upon specific legislative acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

This rule is intended to implement Iowa Code sections 422.7 and 422.9.

[Editorial change: IAC Supplement 11/2/22]

**701—300.5(422) Jeopardy assessments.**

**300.5(1)** A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

**300.5(2)** A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code section 422.30.

[Editorial change: IAC Supplement 11/2/22]

**701—300.6(422) Information deemed confidential.** Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information will be bound by the same rules of secrecy under these sections as

any member of the department and will be subject to the same penalties for violations as provided by law. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.16, 422.20, and 422.72.

[Editorial change: IAC Supplement 11/2/22]

**701—300.7** Reserved.

**701—300.8(422) Delegations to audit and examine.** Pursuant to statutory authority, the director delegates to authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director.

This rule is intended to implement Iowa Code section 422.70.

[Editorial change: IAC Supplement 11/2/22]

**701—300.9(422) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond issued by a surety company authorized to conduct business in Iowa and approved by the insurance commissioner as to solvency and responsibility in an amount the director may fix, or in lieu of bond, securities approved by the director in an amount the director may prescribe and keep in the custody of the department. Pursuant to the statutory authorization in Iowa Code section 422.16, the director has determined that the following procedures will be instituted with regard to bonds. However, the bonding procedures were applicable only to nonresident employers or withholding agents for withholding taxes due prior to January 1, 1987. The penalty for failure of a withholding agent to file a bond, described in subrule 300.9(4) applies to taxes required to be withheld on or after January 1, 1990.

**300.9(1) When required.**

*a. New applications by withholding agents.* A new withholding agent applicant will be requested to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a withholding agent's identification number for a prior business and the remittance record of the tax under the prior identification number falls within one of the conditions in paragraph "b" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior identification number.

*b. Existing withholding agents.* Existing withholding agents shall be requested to post a bond or security when they have had two or more delinquencies in remitting the withholding tax during the last 24 months if filing returns on a quarterly basis or have had four or more delinquencies during the last 24 months if filing returns on a monthly basis. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. However, the late filing of the return or the late payment of the tax will not count as a delinquency if the withholding agent can satisfy one of the conditions set forth in Iowa Code section 421.27.

*c. Waiver of bond.* If a withholding agent has been requested to post a bond or security or if a withholding agent applicant has been requested to post a bond or security, upon the filing of the bond or security, if the withholding agent maintains a good filing record for a period of two years, the withholding agent may request that the department waive the continued bond or security requirement.

**300.9(2) Type of security or bond.** When it is determined that a withholding agent or withholding agent applicant is required to post collateral to secure the collection of the withholding tax, the following types of collateral will be considered as sufficient: surety bonds, securities or certificates of deposit. When the withholding agent is a corporation, an officer or employee of the corporation may assume personal liability as security for the payment of the withholding tax. The officer or employee will be evaluated as provided in 300.9(1)"a" as if the officer or employee applied as the withholding agent as an individual.

**300.9(3) Amount of bond or security.** When it is determined that a withholding agent or withholding agent applicant is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the withholding agent or applicant

will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' withholding tax liability will be required. If the applicant or withholding agent will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability.

**300.9(4) *Penalty for failure of a withholding agent to file bond.*** If the withholding agent is requested by the department to file a bond to secure collection of the state withholding tax and fails to file the bond, the withholding agent is subject to a penalty. The penalty for failure to file a bond is 15 percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty cannot exceed \$5000.

This rule is intended to implement Iowa Code section 422.16.  
[Editorial change: IAC Supplement 11/2/22]

**701—300.10(422) Indexation.** Iowa Code section 422.5 provides for the adjustment of the tax brackets by a cumulative inflation factor to be determined by the director. The requirement that provided that the state general fund balance on June 30 of the prior calendar year had to be \$60 million or more before there was indexation of the tax rate brackets for the current year was repealed for tax years beginning on or after January 1, 1996.

This rule is intended to implement Iowa Code sections 422.4 and 422.21.  
[ARC 1303C, IAB 2/5/14, effective 3/12/14; Editorial change: IAC Supplement 11/2/22]

**701—300.11(422) Appeals of notices of assessment and notices of denial of taxpayer's refund claims.** A taxpayer may appeal to the director at any time within 60 days from the date of the notice of assessment of tax, additional tax, interest, or penalties. For assessments issued on or after January 1, 1995, if a taxpayer fails to timely appeal a notice of assessment, the taxpayer may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. In addition, a taxpayer may appeal to the director at any time within 60 days from the date of notice from the department denying changes in filing methods, denying refund claims, or denying portions of refund claims. See rule 701—7.8(17A) for information on filing appeals or protests.

This rule is intended to implement Iowa Code sections 421.10 and 422.28.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22]

**701—300.12(422) Indexation of the optional standard deduction for inflation.** Effective for tax years beginning on or after January 1, 1990, the optional standard deduction is indexed or increased by the cumulative standard deduction factor computed by the department of revenue. The cumulative standard deduction factor is the product of the annual standard deduction factor for the 1989 calendar year and all standard deduction factors for subsequent annual calendar years. The annual standard deduction factor is an index, to be determined by the department of revenue by October 15 of the calendar year, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in that calendar year preceding the calendar year for which the annual standard deduction factor is to apply. For tax years beginning on or after January 1, 1996, the department shall use the annual percentage change, but not less than 0 percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the Bureau of Economic Analysis of the United States Department of Commerce and shall add all of that percentage change to 100 percent, rounded to the nearest one-tenth of 1 percent. The annual standard deduction factor shall not be less than 100 percent.

This rule is intended to implement Iowa Code section 422.4.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

**701—300.13(422) Reciprocal tax agreements.** Effective for tax years beginning on or after January 1, 2002, the department of revenue may, when the action has been approved by the general assembly and the governor, and when it is cost-efficient, administratively feasible, and of mutual benefit to Iowa and another state, enter into a reciprocal tax agreement with a tax administration agency of the other state. Under this agreement, income earned from personal services in Iowa by residents of the other state will be exempt from Iowa income tax if the other state provides an identical exemption from its state income

tax for income earned in the other state from personal services by Iowa residents. For purposes of this rule, “income earned from personal services” includes wages, salaries, commissions, tips, deferred compensation, pensions, and annuities which were earned from personal services in Iowa by a resident of another state that had a reciprocal tax agreement with Iowa at the time the wages, salaries, commissions, tips, deferred compensation, pensions, or annuities were earned. See rule 701—302.45(422) for the treatment of deferred compensation, pensions, or annuities received by a nonresident of Iowa related to the documented retirement of a participant in a deferred compensation plan, a pensioner or an annuitant. The provisions of rule 701—302.45(422) supersede the definition of “income earned from personal services” under any reciprocal agreement as it relates to deferred compensation, pensions, or annuities.

**300.13(1) *Reciprocal tax agreement with Illinois.*** Pursuant to the authority of Iowa Code subsection 422.8(5), the department of revenue entered into a reciprocal tax agreement with tax administration officials of Illinois in November 1972 which went into effect for taxable years which began after December 31, 1972. The Iowa-Illinois reciprocal tax agreement cannot be terminated by the Iowa department of revenue unless the termination is authorized by a constitutional majority of each house of the general assembly and is approved by the governor. The Iowa-Illinois reciprocal tax agreement includes the following terms:

*a.* No Illinois or Iowa employer is required to withhold Illinois income tax from compensation paid to an Iowa resident for personal services in Illinois.

*b.* No Illinois or Iowa employer is required to withhold Iowa income tax from compensation paid to an Illinois resident for personal services in Iowa.

*c.* Every Iowa employer who is subject to the jurisdiction of Illinois is liable to the state of Illinois for withholding of Illinois income tax from compensation paid to Illinois residents.

*d.* Every Illinois employer who is subject to the jurisdiction of Iowa is liable to the state of Iowa for the withholding of Iowa income tax from compensation paid to Iowa residents.

*e.* The Illinois department of revenue will encourage Illinois employers who are not subject to the jurisdiction of Iowa to withhold and remit Iowa income tax from wages paid to Iowa residents employed in Illinois.

*f.* The Iowa department of revenue will encourage Iowa employers who are not subject to the jurisdiction of Illinois to withhold and remit Illinois income tax from compensation paid to Illinois residents from employment in Iowa.

*g.* For purposes of the agreement, “compensation” means wages, salaries, commissions, tips, deferred compensation, pensions, and annuities and any other remuneration paid for personal services. In the case of deferred compensation, pensions, and annuities, those incomes are deemed to have been earned at the time of employment. Therefore, if an Illinois resident receives a pension or annuity from employment in Iowa at the time the reciprocal agreement was in effect, the pension or annuity income is not taxable to Iowa since it is “compensation” covered by the reciprocal agreement. See rule 701—302.45(422) for the treatment of deferred compensation, pensions, or annuities received by an Illinois resident related to the documented retirement of a participant in a deferred compensation plan, a pensioner or an annuitant. The provisions of rule 701—302.45(422) supersede the definition of “compensation” under the reciprocal agreement with Illinois. “Compensation” does not include unemployment compensation benefits which an Illinois resident receives due to employment in Iowa.

*h.* No Iowa resident is required to pay Illinois income tax or file an Illinois return from compensation paid from personal services in Illinois.

*i.* No Illinois resident is required to pay Iowa income tax or to file an Iowa return on compensation for personal services in Iowa.

*j.* For purposes of the agreement, the term “Iowa resident” means an individual who is a resident under the laws of the state of Iowa, and the term “Illinois resident” means an individual who is a resident as defined in the Illinois Income Tax Act.

**300.13(2)** *Reciprocal tax agreements with states other than Illinois.* The Iowa department of revenue has not entered into reciprocal tax agreements with any state except the state of Illinois. See subrule 300.13(1).

This rule is intended to implement Iowa Code section 422.8 as amended by 2002 Iowa Acts, House File 2116, and section 422.15.

[ARC 1665C, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

**701—300.14(422) Information returns for reporting income payments to the department of revenue.** Effective January 1, 1993, every person, every corporation, or agent of a person or corporation, lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having control, receipt, custody, or disposal of any of the income items described in subrule 300.14(1), shall file information returns with the department of revenue by the last day of February following the end of the year in which the payments were made. For purposes of this rule, “every person” is every individual who is a resident of this state. For purposes of this rule, “every corporation” includes all corporations that have a place of business in this state.

**300.14(1)** *Incomes to be included in information returns.* The entities described in rule 701—300.14(422) are required to file information returns to the department of revenue on income payments of interest (other than interest coupons payable to the bearer), rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodic gains, profits, and income to the extent that the amount of income is great enough so that an information return on the income is required to be filed with the Internal Revenue Service (IRS) under provisions of the Internal Revenue Code. However, no reporting is required for payments of deferred compensation, pensions, and annuities to nonresidents of Iowa. In addition, no reporting is required for any type of income payment where information on the income payment is available to the department from the Internal Revenue Service.

**300.14(2)** *Information on income payments available from the Internal Revenue Service.* The department can obtain information from the Internal Revenue Service on many income payments made to individuals in the tax year. The following is a list of federal reporting forms and the types of information available on those forms from the Internal Revenue Service for residents of Iowa:

a. 1065 K-1.

1. Dividends.
2. Interest.
3. Tax withheld.
4. Royalties.
5. Ordinary income or (loss).
6. Real estate income or (loss).
7. Other rental income or (loss).
8. Other portfolio income or (loss).
9. Guaranteed payments.

- b.* K-1 1041.
  - 1. Dividends.
  - 2. Interest.
  - 3. Other taxable income or (loss).
  - 4. Tax withheld.
  
- c.* K-1 1120-S.
  - 1. Dividends.
  - 2. Interest.
  - 3. Tax withheld.
  - 4. Royalties.
  - 5. Ordinary income.
  - 6. Real estate.
  - 7. Other rental.
  - 8. Other portfolio.
  
- d.* 1099-S.
  - 1. Real estate sales.
  
- e.* 1099-B.
  - 1. Aggregate profit and loss.
  - 2. Realized profit and loss.
  
- f.* 1098.
  - 1. Mortgage interest.
  
- g.* 1099-G.
  - 1. Tax withheld.
  - 2. Taxable grant.
  - 3. Unemployment compensation.
  - 4. Agricultural subsidies.
  
- h.* 1099-DIV.
  - 1. Dividends.
  - 2. Tax withheld.
  - 3. Capital gains.
  - 4. Cash liquid distribution.
  - 5. Noncash liquid distribution.
  - 6. Investment expense.
  - 7. Ordinary dividends.

- i. 1099-INT.
  - 1. Interest.
  - 2. Tax withheld.
  - 3. Savings bonds.
  - 4. Interest forfeiture.
  - 5. Tax-exempt interest.

This rule is intended to implement Iowa Code section 422.15.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

**701—300.15(422) Relief from joint and several liability under Iowa Code section 422.21(7) for substantial understatement of tax attributable to nonrequesting spouse or former spouse.** Married or formerly married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return. However, pursuant to Iowa Code section 422.21(7), a person who is eligible for relief under the criteria established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of Iowa tax that is attributable to erroneous items of the nonrequesting spouse or former spouse. For state income tax purposes, the requirements set forth in this rule shall control to the extent that they conflict with Section 6015 of the Internal Revenue Code.

**300.15(1) Filing status required for relief from joint and several liability.** For state income tax purposes, a married or formerly married taxpayer may qualify for relief from joint and several liability under Iowa Code section 422.21(7) only if the taxpayer filed a joint return or filed separately on a combined return.

**300.15(2) Scope of relief for Iowa income tax purposes.** An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

**300.15(3) Requirement to provide IRS determination or other evidence of eligibility.**

a. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for tax relief from the federal government under Section 6015 of the Internal Revenue Code and received a final determination letter or other document issued by the Internal Revenue Service in connection with relief requested under Section 6015 of the Internal Revenue Code, the person is required to provide the department with a copy of such letter or document within the time frame set forth in subrule 300.15(6). Failure to provide this required information, if it exists, will result in the denial of the request for relief from joint and several liability under Iowa Code section 422.21(7).

b. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for federal relief under Section 6015 of the Internal Revenue Code but did not receive a final determination letter or other document issued by the Internal Revenue Service in connection with the requested relief, the person must provide the department with other evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

c. If the person seeking relief under Iowa Code section 422.21(7) did not apply for federal relief under Section 6015 of the Internal Revenue Code, the person must submit a written statement to the department detailing the reason for not applying for relief under Section 6015 of the Internal Revenue Code as well as evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

**300.15(4) Burden of proof; evaluation of criteria listed under Section 6015 of the Internal Revenue Code.** The burden is on the person seeking relief from joint and several liability to show that the person is eligible for relief under Iowa Code section 422.21(7). In determining whether the person seeking relief from joint and several liability is eligible for relief under Iowa Code section 422.21(7), the department shall apply this rule and the relevant criteria set forth in Section 6015 of the Internal Revenue Code and the related federal regulations.

**300.15(5)** *Protesting a denied request for relief from joint and several liability.* If the department denies a claim for relief from joint and several liability under Iowa Code section 422.21(7), the person seeking relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in this rule and Section 6015 of the Internal Revenue Code and the related regulations. In protest proceedings, the burden is on the person seeking relief from joint and several liability to show that the person meets the criteria for relief under this rule and Section 6015 of the Internal Revenue Code.

**300.15(6)** *Time period for requesting relief from joint and several liability.* For tax periods beginning on or after January 1, 2004, relief from joint and several liability must be requested within two years after the date of the notice of assessment. However, an applicant who fails to meet this deadline may be granted equitable relief if the applicant satisfies the criteria listed under Section 6015(f) of the Internal Revenue Code and, if applicable, Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

**300.15(7)** *Notice to nonrequesting spouse or former spouse.* On or before 60 days from the date the person seeking relief from joint and several liability files a request with the department, the department may notify the nonrequesting spouse or former spouse of the request for relief. The notice will advise the nonrequesting spouse or former spouse of the right to intervene by filing a notice of intervention with the department in accordance with subrules 300.15(8) and 300.15(9). The notice shall not include the current address or contact information of the spouse or former spouse requesting relief. The department will use the last-known address of the nonrequesting spouse when sending the notice.

**300.15(8)** *Intervention by nonrequesting spouse or former spouse.* If the nonrequesting spouse or former spouse desires to intervene, such individual shall file a notice of intervention with the department not later than 60 days after the date the notice of the request for relief from joint and several liability is sent by the department to the nonrequesting spouse or former spouse, unless the department directs otherwise.

**300.15(9)** *Contents of notice of intervention.*

a. A notice of intervention must be in the following format:

**DEPARTMENT OF REVENUE**

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Name of Intervenor

**NOTICE OF  
INTERVENTION**

Address of Intervenor

Docket No. \_\_\_\_\_

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b. A notice of intervention must contain all of the following, where applicable and known to the intervenor:

(1) The name, address, telephone number, and identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or individual tax identification number (ITIN) of the person who is requesting intervention);

(2) The docket number of the proceeding initiated by the person seeking relief from joint and several liability under Iowa Code section 422.21(7);

(3) A copy of a determination letter or other document, if any, issued by the Internal Revenue Service showing that the person seeking relief from joint and several liability under Section 6015 of the Internal Revenue Code has been granted or denied relief for the relevant tax years;

(4) A clear and concise statement of the grounds for intervention, all relevant facts, and the reasons why the intervenor agrees or disagrees with the person seeking relief from joint and several liability as to that person's entitlement to such relief;

(5) A citation to any specific statutes, rules, policies, decisions, or orders which may be relevant in the department's determination of the applicability of relief from joint and several liability to the person seeking such relief;

(6) Any information known to the petitioner relating to the department's treatment of similar cases; and

(7) The signature of the intervenor at the conclusion of the notice of intervention attesting to the accuracy and truthfulness of the information set forth in the notice of intervention.

This rule is intended to implement Iowa Code section 422.21 as amended by 2020 Iowa Acts, House File 2641.

[ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 2393C, IAB 2/3/16, effective 3/9/16; ARC 5801C, IAB 7/28/21, effective 9/1/21; Editorial change: IAC Supplement 11/2/22]

**701—300.16(422) Preparation of taxpayers' returns by department employees.** A department employee can assist a taxpayer in the preparation and completion of the taxpayer's individual income tax returns and other state tax returns during the employee's hours of employment for the department in either of the following situations:

1. At the time the department employee is conducting an audit of the taxpayer.
2. When the department employee is requested to prepare a taxpayer's individual income tax return or other tax returns by the taxpayer, the taxpayer's spouse, or the taxpayer's authorized representative.

This rule is intended to implement Iowa Code section 421.17.  
[Editorial change: IAC Supplement 11/2/22]

**701—300.17(422) Resident determination.** For Iowa individual income tax purposes, an individual is a "resident" if: (1) the individual maintains a permanent place of abode within the state, or (2) the individual is domiciled in the state. An individual who is determined to be a "resident" of Iowa is subject to Iowa income tax on all the individual's income for the taxable year, no matter whether the income is earned within Iowa or outside of Iowa, except when an item of income is specifically exempted from taxation by a provision of federal or Iowa law.

**300.17(1) Permanent place of abode.** The establishment of a permanent place of abode requires the maintenance of a place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. Significant factors, among others, to be considered in determining whether an individual maintains such a permanent place of abode are: (1) the amount of time the individual spends in the locality; (2) the nature of the individual's place of abode; (3) the individual's activities in the locality; and (4) the individual's intentions with regard to the length and nature of the individual's stay.

There is a rebuttable presumption that an individual is maintaining a "permanent place of abode" if the individual maintains a place of abode within this state and spends more than 183 days of the tax year within this state. The term "place of abode" includes a house, apartment, condominium, mobile home, or other dwelling place maintained or occupied by the individual whether or not owned or rented by the individual. Situations where presence in the state for 183 days of the tax year may not cause an individual to be considered to be maintaining a "permanent place of abode" would include situations where presence in the state is not voluntary, such as confinement to a correctional facility or an extended hospital stay.

**300.17(2) Domicile.** An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not

dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d, 329, 331 (1963). The director may require an individual claiming domicile outside the state of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

*a.* There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:

- (1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, and either
- (2) Claims a homestead credit or military tax exemption on a home in Iowa, or
- (3) Is registered to vote in Iowa, or
- (4) Maintains an Iowa driver's license, or
- (5) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

*b.* There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets all of the following factors:

- (1) Does not claim a homestead credit or military exemption on a home in Iowa,
- (2) Is not registered to vote in Iowa,
- (3) Does not maintain an Iowa driver's license,
- (4) Is in Iowa less than 183 days of the tax year; and
- (5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

*c.* In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

- (1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.
- (2) Maintains an Iowa driver's license.
- (3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.
- (4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.
- (5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.
- (6) Vehicles registered in Iowa.
- (7) Location of employment or active participation in a business within Iowa.
- (8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.
- (9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.
- (10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

An individual may qualify as a part-year resident of Iowa by: (1) not maintaining a permanent place of abode; and (2) not having a domicile in Iowa for the entire tax year. In determining part-year resident status, whether an individual is in or out of Iowa for 183 days may not be a factor.

**300.17(3)** *Resident determination for individuals on active duty military service.* The Soldiers and Sailors Civil Relief Act provides in 50 U.S.C. Appx § 574(1) that members of the armed forces of the United States shall not be deemed to have lost a residence or domicile in any state, solely by being absent from that state in compliance with military or naval orders, or to have acquired a residence or domicile in another state while being absent from the state of residence. Thus, residents of Iowa who enter military service will retain their Iowa residence during the tenure of their military service or until they take positive action to change their state of residence.

For tax years beginning prior to January 1, 2011, residents of Iowa in military service will have Iowa income tax withheld from their military pay except when the military pay is earned in a combat zone and is totally or partially exempt from both federal and state income tax. An Iowa resident in military service can change state of residence for purposes of withholding of state income tax by completing Form DD2058 and designating a state other than Iowa as the individual's new state of residence. The military payroll officer of the service person will accept the DD2058 form and stop withholding Iowa income tax from the service person's military pay and start withholding the state income tax of the state of new residence of the service person (assuming the new state of residence has an income tax and assuming the new state of residence requires withholding of income tax from wage payments to its residents in military service). However, the completion of the DD2058 form by the "former Iowa resident" will not be considered as a valid change of residence for Iowa income tax purposes unless the service person was physically residing in the new state of residence at the time the DD2058 form was completed and the service person took other actions to show intent to change state of residence. Other actions to show intent to change state of residence would include: (1) registering to vote in the new state; (2) purchasing real property in the new state; (3) titling and registering vehicles in the new state; (4) notifying the state of previous residence of the state of residence change; (5) preparing a new last will and testament which indicates the new residence; and (6) complying with the tax laws of the state of new residence. For tax years beginning on or after January 1, 2011, see rule 701—302.76(422) regarding the exemption of active duty pay for both resident and nonresident members of the armed forces, armed forces military reserve, or the national guard.

Military personnel who are residents of other states and who come to Iowa as a result of military or naval orders, but who later decide to become legal or actual residents of Iowa, or military personnel who purchase residential property in Iowa and claim homestead credits or the military exemption for the property for property tax purposes are presumed to be residents of Iowa for income tax purposes.

Military personnel who are not residents of the state of Iowa and who receive military pay for service in Iowa shall not be considered to have received this income for services performed within Iowa or from sources within Iowa. These nonresidents of Iowa will be taxable on nonmilitary wages for personal services in Iowa they receive while stationed in Iowa. These individuals will also be taxable to Iowa on incomes they receive from businesses, trades, professions, or occupations operated in Iowa during the time they are stationed in Iowa as well as on nonmilitary incomes from any other sources within Iowa.

Since military nonresidents of Iowa cannot be taxed on their military pay while they are stationed in Iowa, the military pay cannot be considered for purposes of Iowa's taxation of nonresidents in accordance with the Servicemembers Civil Relief Act, Public Law 108-189. The military pay of the nonresident of Iowa must be excluded from the computation of the nonresident credit set forth in rule 701—304.5(422). This exclusion from the computation of the nonresident credit applies to military pay of nonresident servicemembers who are in an active duty status as defined under Title 10 of the United States Code.

For tax years beginning before January 1, 2009, spouses of military personnel who earn wages and other incomes from Iowa sources are taxed on these incomes similarly to other nonresidents of Iowa. Spouses of Iowa resident military personnel who were nonresidents of Iowa at the time of the marriages with the Iowa residents will not be considered to be residents of Iowa until they actually reside in Iowa with their husbands or wives. For tax years beginning on or after January 1, 2009, spouses who earn wages from Iowa sources are not subject to Iowa income tax on these wages if one spouse who is present in Iowa is a member of the armed forces, the other spouse is present in Iowa solely to be with the military spouse, and the spouse who is a member of the armed forces maintains a domicile in another state.

This treatment for tax years beginning on or after January 1, 2009, is required by the Military Spouses Residency Relief Act, Public Law No. 111-97.

**300.17(4) Examples of resident determination.**

*a.* Fred and Mary were domiciled in Iowa when Fred retired in 1994. They have a house in Iowa and a condominium in Florida. Prior to 1994, Fred and Mary spent approximately four months in Florida and the remaining eight months in Iowa. Fred owned a small business when he retired and was retained as a consultant and remained a member of the board of directors after retirement. Fred and Mary have friends and family in both Iowa and Florida. They are also involved in the activities of the local country club as well as other civic and service organizations in both locations. When Fred retired, he and Mary decided to spend more time in Florida, especially during the winter months. They usually leave for Florida in late October and return to Iowa in early April. They have transferred their automobile registrations to Florida and they have acquired Florida driver's licenses. They have registered to vote in Florida and have voted in Florida elections. They visit doctors and dentists in both locations as the need arises. They maintain bank accounts in both locations and have mail sent to the location at which they are physically residing. Fred and Mary usually return to Iowa for the Thanksgiving and Christmas holidays and Fred returns once a month to attend board meetings. They do not claim a homestead credit or military tax exemption on their Iowa home, but they do use their Iowa address on most of their legal documents and on their federal tax return. They also travel and vacation during the winter months and oftentimes leave Florida to vacation.

Fred and Mary would be considered Iowa residents because they have retained a permanent abode in Iowa.

*b.* Susan takes an apartment in Des Moines when her employer assigns her to the region office of a large accounting firm for a temporary period. She spends more than 183 days in Iowa, but she returns to her apartment in Ohio once a month to visit her friends and to check her mail. She intends to return to Ohio when her assignment in Des Moines is terminated. She has retained her Ohio driver's license and she is registered to vote in Ohio.

Susan would not be considered to be an Iowa resident because she has not established a "permanent" place of abode in Iowa, even though she is present in Iowa for more than 183 days. Also, she has not had a definite abandonment of her former domicile. Susan would be taxed on her Iowa income as a nonresident. However, if Susan was assigned to Des Moines on a permanent basis, she may be considered an Iowa resident even though she retains her apartment in Ohio.

*c.* John is an over-the-road truck driver and his job takes him out of Iowa for approximately 240 days a year. He is married and his wife, Mary, lives in Marshalltown, Iowa. His two school-age children attend school in that community and Mary also has a part-time job as a nurse for the neighborhood clinic. John gets home for most weekends and for the holidays. He is registered to vote in Iowa and utilizes the Iowa homestead and military tax exemptions. He does not own any other real property except a lakeside cabin in Minnesota, where the family vacations during the summer.

John would be considered an Iowa resident even though he is not present in the state for more than 183 days because John intends to return to Iowa whenever he is absent and has not taken any steps to establish residency in any other state.

*d.* Wilber, who is a resident of Idaho, has a heart attack while vacationing in Iowa. He is hospitalized in the University Hospitals in Iowa City. While there, the doctors also discover that he has a rare blood disorder and Wilber is confined to the hospital for nearly nine months, during which time he receives treatment.

Wilber's presence in Iowa is for a medical emergency. When an individual suffers a medical emergency while present in this state for other purposes and cannot be realistically moved from the state or in situations where an individual is confined to an institution as a result of seeking treatment, the time spent in Iowa would not count toward the 183-day rule. Also, Wilber's hospital room would not be considered a permanent place of abode.

*e.* Chuck and Linda both worked for a major manufacturing company in Iowa and both of them decided to take advantage of an early retirement package offered by their employer. They do not have any children, but Chuck has a brother who lives in Davenport, Iowa, and Linda has a sister who lives

in Phoenix, Arizona. After retirement, Chuck and Linda sell their house and purchase a motor home. They spend their time traveling the United States and Canada. They do not have a place of abode in any state as they live in their new vehicle. They do not spend more than 183 days in any state during the year. They retained their Iowa driver's licenses and their motor home is registered in Iowa. They also have bank accounts in both Iowa and Arizona, and they have their mail sent to Chuck's brother as well as Linda's sister. They show Iowa as their state of residence for federal income tax purposes. They are not registered to vote in any state.

Chuck and Linda would be considered residents of Iowa. They have not shown an intention to change domicile and remain in another state permanently or indefinitely.

This rule is effective for tax years beginning on or after January 1, 1995.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9822B, IAB 11/2/11, effective 12/7/11; ARC 1303C, IAB 2/5/14, effective 3/12/14; Editorial change: IAC Supplement 11/2/22]

**701—300.18(422) Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return.** For tax years beginning on or after January 1, 1992, if a taxpayer repays in the current tax year an amount of income that had been reported on the taxpayer's Iowa individual income tax return for a prior year that had been filed with the department and the taxpayer would have been eligible for a tax benefit under similar circumstances under Section 1341 of the Internal Revenue Code, the taxpayer will be eligible for a tax benefit on the Iowa return for the current tax year. The tax benefit will be either the reduced tax on the Iowa return for the current tax year due to the deduction of the repaid income or the reduction in tax on the Iowa return or returns for the prior year(s) due to the exclusion of the repaid income. The reduction in tax from the return for the prior year may be claimed as a refundable credit on the return for the current tax year.

EXAMPLE A: A taxpayer reported \$7,000 in unemployment benefits on the taxpayer's 1994 Iowa return that the taxpayer had received in 1994. In early 1995 the taxpayer was notified that \$4,000 of the unemployment benefits had to be repaid. The benefits were repaid by the end of 1995. The taxpayer claimed a deduction on the 1995 Iowa return for the amount of unemployment benefits repaid during 1995 which had been reported on the taxpayer's 1994 Iowa return as that action gave the taxpayer a greater reduction in Iowa income tax liability than the taxpayer would have received from a reduction in tax on the 1994 return by recomputing the liability by excluding the repaid income.

EXAMPLE B: A taxpayer had received a \$5,000 bonus in 1994 which was reported on the taxpayer's 1994 Iowa return. In 1995 the taxpayer's employer advised the employee that the bonus was awarded in error and to be repaid. The \$5,000 bonus was repaid to the employer by the end of 1995. The taxpayer claimed a credit of \$440 on the 1995 Iowa return for repayment of the bonus in 1995. This represented the reduction in tax for 1994 from recomputing the tax liability for that year without the \$5,000 bonus. This provided the taxpayer a greater tax benefit than the taxpayer would have received from claiming a deduction on the 1995 Iowa return from repayment of the bonus.

This rule is intended to implement Iowa Code section 422.5 as amended by 1996 Iowa Acts, Senate File 2168.

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<sup>◇</sup> Two or more ARCs

CHAPTER 302  
DETERMINATION OF NET INCOME

[Prior to 12/17/86, Revenue Department[730]]

[Prior to 11/2/22, see Revenue Department[701] Ch 40]

**701—302.1(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; Editorial change: IAC Supplement 11/2/22]

**701—302.2(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 U.S.C.S. 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 U.S.C.S. 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.

**302.2(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 U.S.C.S. Section 1423[a]).

2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 U.S.C.S. Section 745).

3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 U.S.C.S. Section 1403).

4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 U.S.C.S. 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 U.S.C.S. Section 713a-5).

2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 U.S.C.S. 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 U.S.C.S. Section 2023).

4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 U.S.C.S. Section 2079).

5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 U.S.C.S. 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 U.S.C.S. Section 2098).

7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 U.S.C.S. Section 2278b-10[b]).

8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 U.S.C.S. 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 U.S.C.S. Section 1825).

10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 U.S.C.S. Section 2288, 31 U.S.C.S. 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 U.S.C.S. 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 U.S.C.S. 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 U.S.C.S. Section 2288(b)).

14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 U.S.C.S. 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 U.S.C.S. Section 3124[a]).

16. Housing and Urban Development (HUD).

- Principal and interest from War Housing Insurance debentures (12 U.S.C.S. Section 1739[d]).
- Principal and interest from Rental Housing Insurance debentures (12 U.S.C.S. Section 1747g[g]).
- Principal and interest from Armed Services Mortgage Insurance debentures (12 U.S.C.S. Section 1748b[f]).
- Principal and interest from National Defense Housing Insurance debentures (12 U.S.C.S. Section 1750c[d]).
- Principal and interest from Mutual Mortgage Insurance Fund debentures (12 U.S.C.S. 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 U.S.C.S. Section 1795k[b]).

18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 U.S.C.S. 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 U.S.C.S. Section 1087-2[1], 31 U.S.C.S. Section 3124[a]).

20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 U.S.C.S. Section 831n-4[d]).

21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 U.S.C.S. Section 2005[d][4]).

22. Treasury Investment Growth Receipts.

23. Certificates on Government Receipts.

**302.2(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; Editorial change: IAC Supplement 11/2/22]

**701—302.3(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. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under Iowa Code section 12.91(9).
21. 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; ARC 5673C, IAB 6/2/21, effective 7/7/21; Editorial change: IAC Supplement 11/2/22]

**701—302.4** Reserved.

**701—302.5(422) Military pay.**

**302.5(1)** Reserved.

**302.5(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; Editorial change: IAC Supplement 11/2/22]

**701—302.6(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.7(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.8(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.9(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; Editorial change: IAC Supplement 11/2/22]

**701—302.10 and 302.11** Reserved.

**701—302.12(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.13(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.  
[Editorial change: IAC Supplement 11/2/22]

**701—302.14(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.  
[Editorial change: IAC Supplement 11/2/22]

**701—302.15(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).

**302.15(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.

**302.15(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.

**302.15(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.

**302.15(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; Editorial change: IAC Supplement 11/2/22]

**701—302.16(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).

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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.

**302.16(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; Editorial change: IAC Supplement 11/2/22]

**701—302.17(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.18(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.

**302.18(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.

**302.18(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.

**302.18(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.

**302.18(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.

**302.18(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.

**302.18(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.

**302.18(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	12,500	12,500
Subtotal	<u>\$139,500</u>	<u>\$139,500</u>
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	12,500	12,500
Subtotal	<u>\$137,500</u>	<u>\$137,500</u>
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.

**302.18(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.

**302.18(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).

[Editorial change: IAC Supplement 11/2/22]

**701—302.19(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.20(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.21(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.

**302.21(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.

**302.21(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.

### **302.21(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.

**302.21(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.

**302.21(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.

**302.21(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; Editorial change: IAC Supplement 11/2/22]

#### **701—302.22(422) Disability income exclusion.**

**302.22(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.

**302.22(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.

**302.22(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.

**302.22(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.

**302.22(5)** Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

**302.22(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.23(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:

**302.23(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:

$$\begin{array}{r} \text{Husband} \\ \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

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:

$$\begin{array}{l} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{l} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{l} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

**302.23(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.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

**302.23(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).

**302.23(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.24(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.25 and 302.26** Reserved.

**701—302.27(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.

**302.27(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.

**302.27(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.28** Reserved.

**701—302.29(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.30(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; Editorial change: IAC Supplement 11/2/22]

**701—302.31(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; Editorial change: IAC Supplement 11/2/22]

**701—302.32(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.  
[Editorial change: IAC Supplement 11/2/22]

**701—302.33** Reserved.

**701—302.34(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.  
[Editorial change: IAC Supplement 11/2/22]

**701—302.35(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.  
[Editorial change: IAC Supplement 11/2/22]

**701—302.36(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.  
[Editorial change: IAC Supplement 11/2/22]

**701—302.37(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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.

**302.38(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; Editorial change: IAC Supplement 11/2/22]

**701—302.39(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; Editorial change: IAC Supplement 11/2/22]

**701—302.40(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.41** Reserved.

**701—302.42(422) Depreciation of speculative shell buildings.**

**302.42(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.

**302.42(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.

**302.42(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.43(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; Editorial change: IAC Supplement 11/2/22]

**701—302.44(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:

**302.44(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.

**302.44(2) Reserved.**

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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.45(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:

**302.45(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.

**302.45(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.46(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:

**302.46(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).

**302.46(2)** *Filing composite Iowa returns for nonresident members of professional athletic teams.* For tax years beginning prior to January 1, 2022, professional athletic teams may file composite Iowa returns under 701—Chapter 404 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. Information on filing composite returns for tax years beginning on or after January 1, 2022, for nonresident members of professional athletic teams can be found in rule 701—405.9(422).

**302.46(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.

**302.46(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; Editorial change: IAC Supplement 11/2/22; ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—302.47(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; Editorial change: IAC Supplement 11/2/22]

**701—302.48(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.49(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.50(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.

**302.50(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.

**302.50(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.

**302.50(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.

**302.50(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.51(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.52(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.53(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

qualified education expenses 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.

**302.53(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 contributed or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the Iowa educational savings plan trust 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 filed the 1998 Iowa individual income tax return, the participant could 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.

**302.53(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.

**302.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* The refund or withdrawal of funds is to be included in net income on a participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior Iowa individual income tax returns of the participant if the 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 the participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the following:

*a. Qualifying higher education withdrawals.* The payment of qualified higher education expenses as defined in Section 529(e)(3) of the Internal Revenue Code. The term "qualified higher education expenses" does not include tuition expenses related to attendance at an elementary or secondary school.

*b. Qualifying elementary and secondary tuition withdrawals.* For withdrawals made on or after January 1, 2018, the payment of tuition expenses in connection with and required for enrollment or attendance at an elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, and which adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216. These qualified tuition expenses shall not exceed \$10,000 per beneficiary per year. This limitation is based on the beneficiary, not the participant.

Participants are responsible for tracking the amount of qualified tuition expense payments a beneficiary may receive from other participants. If a beneficiary's distributions exceed this annual limitation, the most recent payments are presumed to be the nonqualifying payments. By agreement amongst themselves, account holders are permitted to choose an alternative method for determining which payments are nonqualifying. An alternative method is presumed valid if, after the additions to income required by this paragraph, the beneficiary's total qualifying tax-free withdrawals for elementary or secondary school tuition expenses do not exceed the \$10,000 limitation. However, upon request, the account holders are responsible for providing the department with adequate documentation to substantiate the method used.

*c. Change in beneficiaries.* A change in beneficiaries under, or transfer to another account within, the Iowa educational savings plan trust.

*d. ABLE rollovers.* A transfer to the Iowa ABLE savings plan trust, provided such change or transfer is permitted under Iowa Code section 12D.6(5).

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.

EXAMPLE: Beneficiary A is an elementary school student who attends an accredited elementary school located in Iowa. Participant B and participant C have each opened an Iowa educational savings plan trust account with A as the designated beneficiary. In January 2019, participant B withdraws \$6,000 from B's account to pay A's spring semester tuition. In August 2019, participant C withdraws \$6,000 from C's account to pay for A's fall semester tuition. Although neither B nor C has made a withdrawal in excess of \$10,000, that limitation is based on the beneficiary, A, who has received a total of \$12,000 in distributions in 2019. Because A's total distributions have exceeded the annual limitation on distributions related to elementary or secondary school tuition, the participants must include the \$2,000 excess in their net income. Because C's withdrawal was made after B's, the entire excess is presumed attributable to C, and therefore C must include the entire \$2,000 excess in C's Iowa net income for 2019, unless B and C can show that they agreed to an alternative method of allocating the excess amount.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 3664C, IAB 2/28/18, effective 4/4/18; ARC 4516C, IAB 6/19/19, effective 7/24/19; Editorial change: IAC Supplement 11/2/22]

**701—302.54(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.

**302.54(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).

**302.54(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.55(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.56(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.57(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.58(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; Editorial change: IAC Supplement 11/2/22]

**701—302.59** Reserved.

**701—302.60(422) Additional first-year depreciation allowance.**

**302.60(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.

**302.60(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.

**302.60(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.

**302.60(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.

**302.60(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; Editorial change: IAC Supplement 11/2/22]

**701—302.61(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; Editorial change: IAC Supplement 11/2/22]

**701—302.62(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.63(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.64(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.65(422) Section 179 expensing.**

**302.65(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.

**302.65(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. See rule 701—53.23(422) for the section 179 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 the section 179 rules applicable to 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	1,020,000	2,550,000	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

*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.

**302.65(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 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 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 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 2019 Iowa Acts, Senate File 220.

[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; ARC 4517C, IAB 6/19/19, effective 7/24/19; Editorial change: IAC Supplement 11/2/22]

**701—302.66(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.67(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; Editorial change: IAC Supplement 11/2/22]

**701—302.68(422) Injured veterans grant program.**

**302.68(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.

**302.68(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.69(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.

**302.69(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.

**302.69(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.70(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.**

**302.70(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.

**302.70(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.

**302.70(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; Editorial change: IAC Supplement 11/2/22]

**701—302.71(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.

[Editorial change: IAC Supplement 11/2/22]

**701—302.72(422) Exclusion of Vietnam Conflict veterans bonus.**

**302.72(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.

**302.72(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; Editorial change: IAC Supplement 11/2/22]

**701—302.73(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.

**302.73(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.

**302.73(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; Editorial change: IAC Supplement 11/2/22]

**701—302.74(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; Editorial change: IAC Supplement 11/2/22]

**701—302.75(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; Editorial change: IAC Supplement 11/2/22]

**701—302.76(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.

**302.76(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.

**302.76(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.

**302.76(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.

**302.76(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; Editorial change: IAC Supplement 11/2/22]

**701—302.77(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—250.1(423).

This rule is intended to implement Iowa Code section 422.7.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

**701—302.78(422) Allowance of certain deductions for 2008 tax year.**

**302.78(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.

**302.78(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; Editorial change: IAC Supplement 11/2/22]

**701—302.79(422) Special filing provisions related to 2010 tax changes.**

**302.79(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.

**302.79(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.

**302.79(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; Editorial change: IAC Supplement 11/2/22]

**701—302.80(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.

**302.80(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.

**302.80(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).

**302.80(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; Editorial change: IAC Supplement 11/2/22]

**701—302.81(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.

**302.81(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.

**302.81(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).

**302.81(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. This subtraction is not allowed for any contribution that is a transfer from an Iowa educational savings plan trust account and that was previously deducted as a contribution to the Iowa educational savings plan trust.

**302.81(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.

**302.81(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 or as a contribution to an Iowa educational savings plan trust account.

*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 Iowa individual income tax returns of the taxpayer or any other person as contributions to a qualified ABLE program or an Iowa educational savings plan trust account.

**302.81(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).

This rule is intended to implement Iowa Code section 422.7.

[ARC 2691C, IAB 8/31/16, effective 10/5/16; ARC 4516C, IAB 6/19/19, effective 7/24/19; Editorial change: IAC Supplement 11/2/22]

#### **701—302.82(422,541B) First-time homebuyer savings accounts.**

**302.82(1)** *Definitions.* Definitions that apply to the first-time homebuyer savings account program may be found in Iowa Code section 541B.2.

**302.82(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.

**302.82(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.

**302.82(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.

**302.82(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.  
[ARC 3770C, IAB 4/25/18, effective 5/30/18; Editorial change: IAC Supplement 11/2/22]

### **701—302.83(422) Like-kind exchanges of personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020.**

**302.83(1) In general.** Public Law 115-97, Section 13303, repealed the deferral of gain or loss from exchanges of like-kind personal property for federal purposes under Section 1031 of the Internal Revenue Code. This federal repeal applies to exchanges completed after December 31, 2017, unless the taxpayer began the exchange by transferring personal property or receiving replacement personal property on or before that date. Iowa did not conform to this federal repeal for Iowa individual income tax purposes for tax periods beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020, Iowa generally conforms to the federal treatment of gain or loss from exchanges of like-kind personal property, but eligible taxpayers may elect the treatment that applied under prior federal law for Iowa purposes. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal treatment for these exchanges, and no special election is available. This rule governs exchanges of like-kind personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020. This rule does not apply to exchanges completed during any tax year beginning on or after January 1, 2020.

**302.83(2) Qualification.** Section 1031 of the Internal Revenue Code in effect on December 21, 2017, and any applicable federal regulations govern whether transactions involving the disposition and acquisition of personal property qualify for Iowa individual income tax purposes as a like-kind exchange of personal property subject to the deferral of gain or loss, and also govern the date and tax period during which an exchange is considered completed. The treatment of such transactions as a like-kind exchange for Iowa individual income tax purposes is either mandatory or permissive depending on the date the like-kind exchange is completed.

*a. Like-kind exchanges completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019.* Transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019, are required to be treated as a like-kind exchange for Iowa individual income tax purposes.

*b. Like-kind exchanges completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020.* For tax periods beginning on or after January 1, 2019, Iowa is conformed to the federal repeal of deferral of gain or loss from exchanges of like-kind personal property, so the federal and Iowa treatment of such transactions under Section 1031 of the Internal Revenue Code will generally be the same. However, transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020, may at the election of the taxpayer be treated as a like-kind exchange for Iowa individual income tax purposes. The election is made by completing the necessary worksheets and forms and making the required adjustments on the Iowa return as described in subrule 40.83(3). No special attachment or statement is required. The election only applies to the transactions involved in the like-kind exchange, and the taxpayer may elect or not elect to treat other qualifying transactions as a like-kind exchange for Iowa purposes.

**302.83(3) Calculation and Iowa adjustments.** A taxpayer required to or electing to treat qualifying transactions as a like-kind exchange for Iowa tax purposes must make certain Iowa calculations and adjustments on forms and worksheets made available on the department's website. The IA 8824 Worksheet described in this subrule need not be included with the Iowa return but must be kept with the taxpayer's records. The taxpayer is responsible for providing documentation at the department's request to substantiate a like-kind exchange under this rule.

*a. Like-kind exchange calculation.* The taxpayer must complete Parts I and II of the IA 8824 Worksheet to compute the Iowa recognized gain, if any, the Iowa deferred gain or loss, and the Iowa basis of the like-kind personal property received in the like-kind exchange.

EXAMPLE 1: X, a sole proprietor engaged in commercial farming and filing on a calendar-year basis, trades a tractor with a fair market value (FMV) of \$25,000 along with \$75,000 in cash to Y for a new tractor with an FMV of \$100,000. For purposes of this example it is assumed that the tractor trade occurs in 2019 and qualifies as a like-kind exchange and that X elects such treatment for Iowa individual income tax purposes under paragraph 40.83(2) "b." At the time of the trade, the adjusted basis of X's old tractor is \$0 for federal tax purposes and is \$13,680 for Iowa tax purposes. X realizes a gain for Iowa purposes on the exchange of the old tractor in the amount of \$11,320 (\$100,000 FMV of new tractor - \$75,000 cash paid - \$13,680 Iowa adjusted basis of old tractor). Because X did not receive any cash or other property that was not like-kind, or assume any liabilities from Y, the entire amount of X's \$11,320 realized gain qualifies for deferral, so X recognizes \$0 of gain on the exchange for Iowa tax purposes. As a result, X's basis in the new tractor for Iowa tax purposes is \$88,680 (\$13,680 Iowa adjusted basis of old tractor + \$75,000 cash paid by X).

*b. Iowa nonconformity adjustment.*

(1) The taxpayer must complete Part III of the IA 8824 Worksheet to adjust for the difference between any recognized Iowa gain from the exchange as calculated on the IA 8824 Worksheet, Part II, and any gain or loss (including gain or loss recaptured as ordinary income) recognized on the taxpayer's federal return.

EXAMPLE 2: Assume the same facts as given in Example 1. Because the tractor trade occurred in 2019, it will not qualify as a like-kind exchange for federal tax purposes but will instead be treated as two separate transactions: a sale of the old tractor and a purchase of the new tractor. X recognizes a gain for federal tax purposes on the sale of the old tractor in the amount of \$25,000 (\$25,000 sales price of old tractor - \$0 federal adjusted basis of old tractor), the entire amount of which is recaptured as ordinary income because of prior depreciation. X reports the \$25,000 of income on the federal return. X is required to report the same \$25,000 as income on the Iowa return but is also allowed a \$25,000 subtraction on the same Iowa return because X's recognized gain for Iowa tax purposes is \$0 as calculated

in Example 1. X's nonconformity adjustment of -\$25,000 must be reported on the Iowa return in the manner prescribed on the IA 8824 Worksheet.

(2) If the total recognized federal gain is reported using the installment sale method under Section 453 of the Internal Revenue Code, the total amount of any Iowa nonconformity adjustment related to that federal gain must be claimed over the same installment period, and the proportion of the total Iowa nonconformity adjustment claimed for each tax year shall equal the same proportion that the federal gain reported for that tax year bears to the total amount of federal gain that will ultimately be reported for all tax years resulting from the disposition of the personal property. The taxpayer must complete an IA 8824 Worksheet for each tax year that an Iowa nonconformity adjustment is claimed.

*c. Cost recovery adjustments.*

(1) The taxpayer must complete the IA 4562A to account for any differences between the federal and Iowa cost recovery deductions related to the like-kind personal property involved in the like-kind exchange, including if the taxpayer's basis in the like-kind personal property received is different for federal and Iowa purposes, or if the taxpayer claimed additional first-year depreciation or a section 179 deduction for federal purposes on the like-kind property received in the exchange. See rule 701—40.60(422) for requirements related to the disallowance of additional first-year depreciation for Iowa individual income tax purposes. See rule 701—40.65(422) for the section 179 limitations imposed under the Iowa individual income tax.

(2) Treasury Regulation §1.168(i)-6 prescribes rules related to the calculation of depreciation for certain assets involved in a like-kind exchange, but a taxpayer may elect to not have those rules apply pursuant to Treasury Regulation §1.168(i)-6(i). A taxpayer may choose to make a similar election under Treasury Regulation §1.168(i)-6(i) for Iowa tax purposes with regard to a like-kind exchange under this rule if the personal property otherwise would have qualified for such federal election notwithstanding the fact that no like-kind exchange occurred for federal purposes or the fact that no election was actually made for federal tax purposes in accordance with Treasury Regulation §1.168(i)-6(j). The election is made by calculating depreciation for Iowa tax purposes on the personal property involved in the like-kind exchange using the method described in Treasury Regulation §1.168(i)-6(i) on the timely filed Iowa return, including extensions, for the same tax year that the like-kind exchange was completed. No special attachment or statement is required.

EXAMPLE 3: Assume the same facts as given in Examples 1 and 2. X elects additional first-year depreciation on the new tractor and claims a depreciation deduction on the federal return of \$100,000 (100 percent of X's federal basis). X is required to add back the total amount of the federal depreciation on the Iowa return because Iowa does not allow additional first-year depreciation. But X is permitted deductions for regular depreciation on the new tractor with an Iowa basis of \$88,680 (\$13,680 carryover basis from old tractor + \$75,000 excess basis from cash paid) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). See rule 701—40.60(422) for more information on the disallowance of additional first-year depreciation.

EXAMPLE 4: Assume the same facts as given in Examples 1 and 2. X elects to expense the entire cost of the new tractor under Section 179 of the Internal Revenue Code and claims a deduction on the federal return of \$100,000. X is also required to claim the section 179 deduction on the new tractor for Iowa tax purposes pursuant to subrule 40.65(2). However, the amount that represents the carryover basis from the old tractor (\$13,680) is not eligible for the deduction under Section 179(d)(3) of the Internal Revenue Code, so the cost of the new tractor that is eligible for the section 179 deduction for Iowa purposes is only \$75,000 (excess basis from cash paid). This is the amount of section 179 deduction that X must claim on the Iowa return, subject to the applicable Iowa dollar limitation and reduction limitations in rule 701—40.65(422). Because X is the taxpayer who placed the new tractor in service, X is permitted deductions for regular depreciation on the carryover basis in the new tractor (\$13,680) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k).

This rule is intended to implement Iowa Code section 422.7 as amended by 2018 Iowa Acts, chapter 1161 [Senate File 2417].

[ARC 4614C, IAB 8/14/19, effective 9/18/19; Editorial change: IAC Supplement 11/2/22]

**701—302.84(422) Broadband infrastructure grant exemption.**

**302.84(1) *Broadband infrastructure grant exemption, generally.*** For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.7.

**302.84(2) *Definitions.***

*“Facilitate”* shall have the same meaning as defined in Iowa Code section 8B.1.

*“Grant”* means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. *“Federal grant”* means any grant issued by the United States government, including any agency or instrumentality thereof.

2. *“State grant”* means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. *“Local grant”* means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

**302.84(3) *Limitation on certain refund claims.*** For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.7.

[ARC 5606C, IAB 5/5/21, effective 6/9/21; Editorial change: IAC Supplement 11/2/22]

**701—302.85(422) Interest expense deduction adjustments.** For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes for tax year 2018 (subrule 40.85(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 40.85(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 40.85(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

**302.85(1) *Definitions.*** The following terms apply to the interpretation and application of this rule.

*“Current-year business interest expense”* means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

*“Excess business interest expense”* means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

*“Iowa partnership”* means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

*“Iowa S corporation”* means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

*“Non-Iowa partnership”* means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

*“Non-Iowa S corporation”* means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

**302.85(2) *Tax year 2018.*** For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent

limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

*a. In general.* For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer's additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 40.85(3) for more information about these 2019 adjustments.

*b. Special rules for partnerships and S corporations.*

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa's nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity's own Iowa return and the reduction to the partner's or shareholder's share of the entity's income will be included in the all source modifications line of the partners' or shareholders' Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership's non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity's IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships that were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expenses passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K, received from the non-Iowa partnership.

EXAMPLE 2: X is an Iowa resident and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. X is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore X did not receive a 2018 IA 1065 Schedule K-1 from P2, X is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on X's 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation.

EXAMPLE 3: R is an Iowa resident and a shareholder in X, an out-of-state S corporation with no business in Iowa and no Iowa filing obligation. In 2018, X has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, X is permitted to deduct \$80,000 on its 2018 federal income tax return. The \$20,000 in excess business interest expense is then carried forward to be deducted by X in future tax years. Because X is not required

to file an Iowa return, and excess business interest expense amounts are carried forward at the entity level for S corporations rather than being allocated to shareholders, R is not eligible to make an adjustment for X's disallowed business interest expense amounts on R's 2018 Iowa income tax return. R will only be able to benefit from the deductions for these disallowed amounts for Iowa purposes in the same years that X actually deducts the carried-forward amounts for federal purposes.

**302.85(3) Tax year 2019.** For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

*a. Applicable limitation.* For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 4: Taxpayer Z has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, Z's business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, Z's Iowa business interest expense deduction for the year is limited to \$30,000. Z will report this difference by entering a negative \$20,000 adjustment on IA 101, line 3 (Z may have additional adjustments on this line if the current year federal deduction included amounts carried forward from 2018).

*b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019.* To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 40.85(2)"a" (in general), subparagraph 40.85(2)"b"(1) (Iowa partnerships and S corporations), or numbered paragraph 40.85(2)"b"(2)"1" (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 40.85(2)"b"(2)"2."

EXAMPLE 5: X is a partner in P under the same facts described in Example 1 above. For tax year 2019, X completes federal Form 990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to X from P in 2018 on X's 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing X's 2019 Iowa income. The same add-back would be required if this scenario were applied to the facts in Example 2 above.

**302.85(4) Tax years beginning on or after January 1, 2020.** For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

*a. Current-year business interest expense.* For tax years beginning on or after January 1, 2020, a taxpayer's current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under subsection 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the IRC Section 163(j) limitation.

*b. Carryforward.*

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 6: In 2019, X had \$100,000 in current-year business interest expense. X's business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 40.85(3) "a." In 2020, X is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, X may deduct all of X's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of X's disallowed Iowa interest expense carried over from 2019. X must complete the IA 163 in order to calculate X's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts which may be deducted in full on X's 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of "disallowed business interest expense." Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 40.85(4) "b"(1). All prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

EXAMPLE 7: In 2020, taxpayer X has \$100,000 in current-year business interest expense. For federal purposes, X is subject to the IRC Section 163(j) limitation. X deducts \$70,000 in business interest expense on X's 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, X deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, X has \$50,000 in current-year business interest expense. For federal purposes, X is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. X must add the federal carryforward amount (\$5,000) back on X's 2021 Iowa return, limiting X's 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

**302.85(5) Partners and partnerships.**

*a. Partnership-level adjustments.* For tax years beginning on or after January 1, 2020, an Iowa partnership that is subject to the IRC Section 163(j) limitation for federal purposes is permitted to deduct all current-year business interest expense at the partnership level in that tax year for Iowa purposes.

(1) Excess business interest expense. A partnership may include as a reduction on the partnership's Iowa income tax return any excess business interest expense, as defined in Treas. Reg. Section 1.163(j)-1(b)(16), of the partnership that was disallowed and allocated to the partners for that tax year for federal purposes.

(2) Tiered partnerships. For partnerships that receive excess business interest expense passed through from a partnership in which they are a partner, see paragraph 40.85(5) "b" for information on how to report Iowa adjustments for that passed-through income.

*b. Partner-level adjustments.*

(1) Interest expense from Iowa partnerships. Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in subparagraph 40.85(5) "a"(1)

and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner's federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) Interest expense from non-Iowa partnerships. For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner's basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner's basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that were deducted for Iowa, but not for federal, purposes due to Iowa's nonconformity with IRC Section 163(j).

**302.85(6) S corporation adjustments.** For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. See rule 701—53.29(422) for more information about the IRC Section 163(j) adjustments required for corporations, including S corporations, for Iowa purposes. See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code section 422.7(60).  
[ARC 5733C, IAB 6/30/21, effective 8/4/21; Editorial change: IAC Supplement 11/2/22]

#### **701—302.86(422) COVID-19 grant exclusion.**

**302.86(1) Definitions.** For purposes of this rule:

“*Administering agency*” means the economic development authority, the Iowa finance authority, or the department of agriculture and land stewardship.

“*Grant recipient*” means a person who applies for and is issued a qualifying COVID-19 grant by an administering agency.

“*Issued*” means the approval of the grant recipient's application and amount for a qualifying COVID-19 grant by an administering agency, regardless of when the grant funds were paid by the administering agency.

**302.86(2) Qualifying COVID-19 grant programs.**

a. The department is responsible for determining whether a grant program provides a “qualifying COVID-19 grant” as defined in Iowa Code section 422.7(62). In making this determination, and for purposes of the definition of “qualifying COVID-19 grant,” a grant program is “created to primarily provide COVID-19 related financial assistance to economically impacted individuals and businesses located in this state” if that grant program, at the time of its inception, was intended by the administering agency to provide a majority (more than 50 percent) of its financial assistance to or for the benefit of either or both of the following persons economically affected by the COVID-19 pandemic:

- (1) Individuals living in Iowa.
- (2) Businesses that are doing business in Iowa or are deriving income from sources within Iowa.

b. The administering agency shall notify the director of the existence of any grant program it believes may be a qualifying COVID-19 grant program. Upon such notification, the department will request from the administering agency the information necessary to determine whether that program is a qualifying COVID-19 grant as defined in Iowa Code section 422.7(62) and this rule. The administering agency shall provide the department with the requested information within the time frame prescribed by the department in its request. Failure to provide the requested information to the department shall

prevent the department from determining that the grant program is a qualifying COVID-19 grant. Grant programs not specifically listed below in paragraph 302.86(2) “c” are not qualifying COVID-19 grants and are not eligible for the exclusion provided in this rule, even if that program may otherwise meet the definition of “qualifying COVID-19 grant” in Iowa Code section 422.7(62).

c. The following is an exhaustive list of programs that have been identified by the department as qualifying COVID-19 grants, including a general description of each program’s grant recipients, that may qualify for the exclusion from Iowa net income under subrule 302.86(3):

(1) Beef up Iowa program administered by the department of agriculture and land stewardship. Grant recipient is Iowa State University.

(2) Iowa beginning farmer debt relief fund administered by the Iowa finance authority. Grant recipients include Iowa beginning farmers.

(3) Iowa biofuels relief program administered by the economic development authority. Grant recipients include Iowa biodiesel and ethanol producers.

(4) Iowa county fairs relief fund administered by the economic development authority. Grant recipients include Iowa county and district fairs.

(5) Iowa COVID-19 business disruption relief program administered by the economic development authority. Grant recipients include Iowa bars, taverns, breweries, distilleries, wineries, and other similar drinking establishments.

(6) Iowa COVID-19 targeted small business sole operator fund administered by the economic development authority. Grant recipients include Iowa targeted small businesses.

(7) Iowa disposal assistance program administered by the department of agriculture and land stewardship. Grant recipients include Iowa pork and egg producers.

(8) Iowa eviction and foreclosure prevention program administered by the Iowa finance authority. Grant recipients include Iowa residential renters and homeowners.

(9) Iowa homeowner foreclosure prevention program administered by the Iowa finance authority. Grant recipients include Iowa residential homeowners.

(10) Iowa hospital COVID-19 relief fund administered by the economic development authority. Grant recipients include Iowa hospitals.

(11) Iowa livestock producer relief fund administered by the economic development authority. Grant recipients include Iowa livestock producers.

(12) Iowa movie theatre relief grant program administered by the economic development authority. Grant recipients include Iowa movie theaters.

(13) Iowa nonprofit recovery fund administered by the economic development authority. Grant recipients include Iowa nonprofit organizations.

(14) Iowa renewable fuel retail recovery program administered by the department of agriculture and land stewardship. Grant recipients include Iowa fuel retailers.

(15) Iowa rent and utility assistance program administered by the Iowa finance authority. Grant recipients include Iowa residential renters.

(16) Iowa residential utility disruption prevention program administered by the economic development authority. Grant recipients include Iowa residential renters and homeowners.

(17) Iowa restaurant and bar relief grant program administered by the economic development authority. Grant recipients include Iowa bars, breweries, brewpubs, distilleries, wineries, and restaurants.

(18) Iowa small business relief grant program administered by the economic development authority. Grant recipients include Iowa small businesses.

(19) Iowa small business utility disruption prevention program administered by the economic development authority. Grant recipients include Iowa small businesses and small nonprofit organizations.

(20) Local produce and protein program administered by the department of agriculture and land stewardship. Grant recipients include Iowa schools, early childcare centers, specialty crop producers, and food hubs.

(21) Meat processing expansion and development program administered by the department of agriculture and land stewardship. Grant recipients include Iowa meat and poultry processing businesses and employees and Iowa livestock producers.

(22) Pack the pantry program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food pantries.

(23) Pass the pork program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

(24) Turkey to table program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

(25) Iowa bowling center relief fund administered by the economic development authority. Grant recipients include Iowa for-profit bowling centers.

(26) Iowa charter bus relief program administered by the economic development authority. Grant recipients include for-profit charter bus companies with a vehicle fleet registered in Iowa.

(27) Iowa sports entertainment relief program administered by the economic development authority. Grant recipients include certain for-profit and nonprofit sports teams with a home venue located in Iowa.

(28) Iowa fitness center relief program administered by the economic development authority. Grant recipients include for-profit, nonprofit, and local government-owned fitness centers located in Iowa.

**302.86(3) Excluding qualifying COVID-19 grants from Iowa net income.**

*a. Generally.* A grant recipient may subtract a qualifying COVID-19 grant when calculating Iowa net income if all of the following apply:

(1) The grant was issued as part of a qualifying COVID-19 grant program identified in paragraph 302.86(2)“c.”

(2) The grant was issued on or after March 17, 2020, and on or before December 31, 2021.

(3) The grant funds were included in the grant recipient’s net income for a tax year ending on or after March 17, 2020, but beginning before January 1, 2024. The grant may only be subtracted to the extent it is included in the grant recipient’s net income for that qualifying tax year. A qualifying COVID-19 grant that is exempt from federal income tax, and thus not included in the grant recipient’s Iowa net income, does not qualify for an additional subtraction on the grant recipient’s Iowa return.

*b. Third-party payee of grant funds.* A third-party payee of qualifying COVID-19 grant funds is not eligible for this exemption from Iowa income. If the proceeds of a qualifying COVID-19 grant are paid to someone other than the grant recipient, only the grant recipient on whose behalf the grant proceeds were paid may qualify for this exemption from Iowa income.

*c. Repayment.* Grant funds that were repaid to the administering agency for any reason are not eligible for this exemption from Iowa income.

*d. Reporting requirements.* A grant recipient who received qualifying COVID-19 grant funds and who excludes those funds when calculating Iowa net income should retain documentation to support the claimed exclusion. A grant recipient must provide such documentation to the department if requested. The required documentation may include, but is not limited to, documentation to support that the grant recipient was issued and received the grant within the qualifying periods.

This rule is intended to implement Iowa Code section 422.7(62).

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◊ Two or more ARCs

CHAPTER 304  
ADJUSTMENTS TO COMPUTED TAX AND TAX CREDITS

[Prior to 12/17/86, Revenue Department[730]]  
[Prior to 11/2/22, see Revenue Department[701] Ch 42]

**701—304.1(257,422) School district surtax.** Iowa law provides for the implementation of an income surtax for increasing local school district budgets. The surtax must be approved by the voters of a school district in a special election or by a resolution of the board of directors of a school district. The surtax rate is determined by the department of management on the basis of the revenue to be raised by the surtax for the particular school district with the surtax.

The school district surtax is imposed on the income tax liabilities of all taxpayers residing in the school district on the last day of the taxpayers' tax years. For purposes of the school district surtax, income tax liability is the tax computed under Iowa Code section 422.5, less the nonrefundable credits against computed tax which are authorized in Iowa Code chapter 422, division II.

In a situation where an individual is residing in a school district with a surtax and the individual dies during the tax year, the individual will be considered to be subject to the surtax, since the individual was residing in the school district on the last day of the individual's tax year.

An individual serving in the Armed Forces of the United States who maintains permanent residence in an Iowa school district with a surtax is subject to the surtax regardless of whether the individual is physically residing in the school district on the last day of the tax year.

A person who is present in the school district on the last day of the tax year on a temporary basis due to annual leave or in transit between duty stations is not subject to the surtax.

This rule is intended to implement Iowa Code sections 257.21, 257.29, and 422.15.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.2(422D) Emergency medical services income surtax.** Effective July 1, 1992, a county board of supervisors may offer for voter approval a local option income surtax, an ad valorem property tax, or a combination of the two taxes to generate revenues for emergency medical services. However, this rule pertains only to the local option income surtax for emergency medical services. If a majority of those voting in the election approve the emergency medical services income surtax, the income surtax will be imposed for tax years beginning on or after January 1 of the fiscal year in which the election is held. Thus, if an election is held in the 2007-2008 fiscal year (July 1, 2007, through June 30, 2008) and the income surtax is approved in the election, the income surtax will be imposed on 2008 returns for individuals filing on a calendar-year basis. In the case of individuals filing on a fiscal-year basis, the income surtax will be imposed on returns for tax years beginning in the 2008 fiscal year. If an emergency medical services income surtax is imposed for a county, it can be imposed only for a maximum period of five years. When the emergency medical income surtax is repealed because the five-year imposition has expired, the income surtax is repealed as of December 31 for tax years beginning on or after that date.

**304.2(1)** *The rate of the income surtax imposed for emergency medical services.* After the income surtax is approved by an election of county voters, the board of supervisors will set the rate of tax to be imposed, which can be expressed in tenths of 1 percent or hundredths of 1 percent but cannot exceed 1 percent. In addition, because the cumulative total of the percents of income surtax imposed on any taxpayer in the county cannot exceed 20 percent, the rate of an emergency medical services income surtax may be limited, if a school district income surtax has been approved previously by a school district in the county and the surtax rate exceeds 19 percent. Therefore, assuming that a school district in the county had previously approved an income surtax rate of 19.4 percent, the medical emergency income surtax rate would be limited to six-tenths of 1 percent. If a school district income surtax and emergency medical income surtax are approved on or about the same date and the cumulative total of the income surtaxes is greater than 20 percent, the income surtax approved on the earlier of the two dates will be allowed at the rate approved and the second income surtax approved will be limited accordingly so that the cumulative rate will not exceed 20 percent. If a school district income surtax and an emergency medical income surtax are approved on the same date with a proposed cumulative rate that exceeds 20 percent, each of the surtaxes will be reduced equally so that the cumulative surtax rate will not exceed 20

percent. Assuming that a school district in a particular county approves an income surtax of 20 percent on November 4, 2008, and an emergency medical income surtax of 1 percent is approved on the same date, both surtaxes will be reduced by five-tenths of 1 percent so that the cumulative rate of the two income surtaxes does not exceed 20 percent. The department of management can provide information about any income surtaxes that have been approved for the school districts in the county.

**304.2(2) *Imposing the emergency medical income surtax.*** The emergency medical income surtax will be imposed on the state income tax liability on each individual residing in the county at the end of the individual's tax year, whether the individual's tax year ends at the end of the calendar year or fiscal year. For purposes of the emergency medical income surtax, an individual's income tax liability is the aggregate of the state income taxes determined in Iowa Code section 422.5 less the nonrefundable credits against computed income tax which are authorized in Iowa Code chapter 422, division II.

**304.2(3) *Administering the emergency medical income surtax.*** The director of revenue shall administer the emergency medical income surtax in the same way as other state individual tax laws are administered. All powers and requirements related to administering the state income tax law apply to the administration of the emergency medical income surtax including, but not limited to, the provisions of Iowa Code sections 422.4, 422.20 to 422.31, 422.68, 422.70, and 422.72 to 422.75. The county board of supervisors and county officials shall confer with the director for assistance in drafting the ordinance imposing the emergency medical income surtax. Certified copies of the ordinance shall be filed with the department of revenue and the department of management within 30 days after the emergency medical income surtax is approved.

**304.2(4) *Accounting for the emergency medical income surtax and paying the surtax.*** The department shall account for the emergency medical income surtax and any interest and penalties on the surtax so that there is a separate accounting for each county where the income surtax is imposed. The accounting shall be applicable to those individual income tax returns filed on or before November 1 of the calendar year following the tax year for which the tax is imposed. The emergency medical income surtax and any penalties and interest should be credited to a "local income surtax fund" established in the office of the state treasurer. On or before December 15 of the year after the tax year, the director of revenue shall certify to the state treasurer the income surtax and any interest and penalties collected from returns filed on or before November 1.

This rule is intended to implement Iowa Code chapter 422D.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

#### **701—304.3(422) Exemption credits.**

**304.3(1)** A single person shall deduct from the computed tax a personal exemption credit of \$40. A single person is defined in 701—subrule 39.4(1).

**304.3(2)** A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, shall, if a joint return is filed, deduct from the computed tax a personal exemption of \$80. Where such spouse files a separate return, each spouse is entitled to deduct from the computed tax a personal exemption of \$40. The personal exemption may not be divided between the spouses in any other proportion.

**304.3(3)** A taxpayer shall deduct from computed tax an exemption of \$40 for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code, and the same dependents shall be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished 50 percent of the support, the spouses must elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the credit amount for a particular dependent.

**304.3(4)** A head of household as defined in 701—subrule 39.4(7) is allowed a personal exemption credit of \$80.

**304.3(5)** A taxpayer who is 65 years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of \$20 in addition to any other credits allowed by this rule.

**304.3(6)** A taxpayer who is blind, as defined in Iowa Code section 422.12(1) “e,” is allowed a personal exemption credit of \$20 in addition to any other credits allowed by this rule.

**304.3(7)** A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if the nonresident taxpayer or part-year taxpayer was a resident for the entire year.

This rule is intended to implement Iowa Code section 422.12.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.4(422) Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa.** Taxpayers who pay tuition and textbook expenses of dependents who attend grades kindergarten through 12 in Iowa may receive a tax credit of 25 percent of up to \$2,000 (\$1,000 for tax years beginning prior to January 1, 2021) of qualifying expenses for each dependent who receives private instruction, as defined in Iowa Code section 422.12(1) “c,” or attends an elementary or secondary school located in Iowa. A taxpayer whose dependent receives private instruction is only eligible for the tuition and textbook credit for tax years beginning on or after January 1, 2021.

For a taxpayer whose dependent attends an elementary or secondary school, in order for the taxpayer to qualify for the tuition and textbook credit, the elementary school or secondary school that the dependent is attending must meet the standards for accreditation of public and nonpublic schools in Iowa provided in Iowa Code section 256.11. In addition, the school the dependent is attending must not be operated for profit and must adhere to the provisions of the United States Civil Rights Act of 1964, and the provisions of Iowa Code chapter 216, which is known as the Iowa civil rights Act of 1965.

**304.4(1) Tuition.** For purposes of the tuition and textbook tax credit, “tuition” means any charge for the expense of personnel, buildings, equipment, and materials other than textbooks, and other expenses which relate to the teaching of only those subjects that are legally and commonly taught in public elementary or secondary schools in Iowa. “Tuition” includes charges by a qualified school for summer school classes or for instruction of a child who is physically unable to attend classes at the site of the elementary or secondary school. Expenses paid by a taxpayer, including a taxpayer whose dependent receives private instruction, for equipment and materials other than textbooks must be for equipment and materials required for attendance in Iowa in order to be eligible for the tuition and textbook tax credit. The following are examples of equipment and materials that may qualify for the credit provided they are required for attendance in school or for providing private instruction:

- a. Pocket folders and binders.
- b. Spiral notebooks and loose-leaf paper.
- c. Writing utensils, including pens, pencils, highlighters, colored pencils, crayons, and markers.
- d. Backpacks.
- e. Rulers.
- f. Calculators.
- g. Scissors.
- h. Computers, including rental fees paid to a school for the use of a computer.

“Tuition” does not include charges or fees which relate to the teaching of religious tenets, doctrines, or worship in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship. In addition, “tuition” does not include amounts paid to an individual or other entity for instruction that is supplementary to elementary or secondary school instruction or private instruction. Amounts paid to an elementary or secondary school or to a person providing private instruction for meals, lodging, or clothing for a dependent do not qualify for the tax credit for tuition. “Tuition” also does not include expenses for Internet services or Internet upgrades to facilitate remote learning.

**304.4(2) Textbooks.** For purposes of the tuition and textbook tax credit, “textbooks” means books and other instructional materials used to teach only those subjects legally and commonly taught in public elementary and secondary schools in Iowa. “Textbooks” includes fees or charges for required supplies or materials for classes in art, home economics, shop, or similar courses. “Textbooks” also includes books and materials used for extracurricular activities, such as sporting events, musical events, dramatic events, speech activities, driver’s education, or programs of a similar nature.

“Textbooks” does not include amounts paid for books or other instructional materials used in the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrine, or worship. For tax years beginning before January 1, 2021, “textbooks” does not include amounts paid for books or other instructional materials used in teaching a dependent subjects in the home or outside of an elementary or secondary school. For tax years beginning on or after January 1, 2021, “textbooks” does include amounts paid for books or other instructional materials used in teaching a dependent subjects in the home or outside of an elementary or secondary school if that dependent is receiving private instruction.

**304.4(3) *Extracurricular activities.*** For purposes of the tuition and textbook tax credit, amounts paid for dependents to participate in or to attend extracurricular activities may be claimed as part of the tuition and textbook tax credit. “Extracurricular activities” includes sporting events, musical events, dramatic events, speech activities, driver’s education, and programs of a similar nature.

*a.* The following are specific examples of expenditures related to a dependent’s participation in or attendance at extracurricular activities offered by a qualifying school or offered in the course of private instruction that may qualify for the tuition and textbook tax credit:

- (1) Fees for participation in sports activities.
- (2) Fees for field trips.
- (3) Rental fees for instruments for bands or orchestras but not rental fees in rent-to-own contracts.
- (4) Driver’s education fees.
- (5) Cost of activity tickets or admission tickets to sporting, music, and dramatic events.
- (6) Fees for events such as homecoming, winter formal, prom, or similar events.
- (7) Rental of costumes for plays.
- (8) Purchase of costumes for plays if the costumes are not suitable for street wear.
- (9) Purchase of track shoes, football shoes, or other athletic shoes with cleats, spikes, or other features that are not suitable for street wear.
- (10) Costs of tickets or other admission fees to attend banquets or buffets for academic or athletic awards.
- (11) Trumpet grease, woodwind reeds, guitar picks, violin strings, and similar types of items for maintenance of instruments used in bands or orchestras.
- (12) Band booster club or athletic booster club dues, but only if dues are for the dependent and not the parent or adult.
- (13) Rental of a formal gown or a tuxedo for a dance or similar event.
- (14) Dues paid to clubs or organizations such as chess club, photography club, debate club, or similar organizations.
- (15) Amounts paid for music that will be used in music programs, including vocal music programs.
- (16) Fees paid for required general materials for shop class, agriculture class, home economics class, or auto repair class and general fees for equivalent classes.
- (17) Fees for a dependent’s bus trips to attend school or private instruction if paid to the school or the provider of private instruction.
- (18) Costs of band or athletic uniforms.
- (19) Costs of instrument lessons.

*b.* The following are specific examples of expenditures related to a dependent’s participation in or attendance at extracurricular activities offered by a school or offered in the course of private instruction that will not qualify for the tuition and textbook credit.

- (1) Purchase of a musical instrument used in a band or orchestra.
- (2) Purchase of basketball shoes or other athletic shoes that are readily adaptable to street wear.
- (3) Amounts paid for special testing such as SAT or PSAT, and for Iowa talent search tests.
- (4) Payments for senior trips, band trips, and other overnight activity trips which involve payment for meals and lodging.
- (5) Fees paid to K-12 schools or to a private instructor for courses for college credit.
- (6) Amounts paid for T-shirts, sweatshirts, and similar clothing that is appropriate for street wear.
- (7) Amounts paid for special programs at universities and colleges.

(8) Amounts paid for a yearbook, annual, or class ring.

(9) Fees for special materials paid for shop class, agriculture class, auto repair class, home economics class, and similar classes. For purposes of this paragraph, “special materials” means materials used for personal projects of the dependents, such as materials to make furniture for personal use, automobile parts for family automobiles, and other materials for projects for personal or family benefit.

(10) Purchase of a formal gown or a tuxedo for a dance or similar event.

(11) Amounts paid for sports-related social events.

**304.4(4) *Claiming the credit.*** The credit can only be claimed by the spouse who claims the dependent credit on the Iowa tax return as described in subrule 42.3(3). For example, for divorced or separated parents, only the spouse who claims the dependent credit on the Iowa return can claim the tuition and textbook credit for tuition and textbook expenses for that dependent.

In cases where married taxpayers file separately on a combined return form, the tuition and textbook credit shall be allocated between the spouses in the ratio in which the dependent credit was claimed between the spouses.

EXAMPLE: A married couple has two dependent children and claimed a tuition and textbook credit of \$500 related to both children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed both of the dependent credits on the Iowa return. The \$500 tuition and textbook credit will be claimed by the spouse who claimed the dependent credits on the Iowa return.

EXAMPLE: A married couple has three dependent children and claimed a tuition and textbook credit of \$600 related to all three children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed one dependent credit, and the other spouse claimed two dependent credits on the Iowa return. The spouse who claimed one dependent credit will claim \$200 of the tuition and textbook credit, while the spouse who claimed two dependent credits will claim \$400 of the tuition and textbook credit.

This rule is intended to implement Iowa Code section 422.12.

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**701—304.5(422) Nonresident and part-year resident credit.** An individual who is a nonresident of Iowa for the entire tax year, or an individual who is an Iowa resident for a portion of the tax year, is allowed a credit against the individual’s Iowa income tax liability for the Iowa income tax on the portion of the individual’s income which was earned outside Iowa while the person was a nonresident of Iowa. This credit is computed on Schedule IA 126. The following subrules explain how the credit is computed for taxpayers who are nonresidents of Iowa and taxpayers who are part-year residents of Iowa.

**304.5(1) *Credit calculation for nonresidents of Iowa.***

*a.* Prior to the calculation of the nonresident credit, a nonresident of Iowa shall compute taxable income in the same manner as a full-year Iowa resident. Thus, a nonresident would have the same initial Iowa income tax liability as a full-year Iowa resident taxpayer with the same taxable income before the nonresident credit is computed.

*b.* The nonresident credit is computed by dividing the taxpayer’s Iowa source net income by the taxpayer’s total net income. See 701—Chapter 40 to determine a nonresident’s Iowa source net income and total net income. This Iowa income percentage is rounded to the nearest tenth of a percent (e.g., 1.2 percent) for tax years beginning before January 1, 2022, and to the nearest ten-thousandth of a percent (e.g., 1.2345 percent) for tax years beginning on or after January 1, 2022. The Iowa income percentage is then subtracted from 100 percent to arrive at the nonresident credit percentage, which represents the percentage of the individual’s total income which was earned outside Iowa. The nonresident credit percentage is multiplied by the net Iowa tax to compute the nonresident credit. For purposes of this subrule, “net Iowa tax” means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12.

EXAMPLE 1: A single resident of Nebraska had Iowa source net income of \$15,000 in 2022 from wages earned from employment in Iowa. The rest of this person's income was attributable to sources outside Iowa. This nonresident of Iowa had a total net income of \$40,000 and a taxable income of \$30,000 due to allowable deductions. The Iowa income percentage is computed by dividing the Iowa source net income of \$15,000 by the taxpayer's total net income of \$40,000, which results in a percentage of 37.5000. This percentage is subtracted from 100 percent, which leaves a nonresident credit percentage of 62.5000.

The Iowa tax before reduction for the nonrefundable credits under Iowa Code section 422.12 is \$1,508. The individual is allowed an exemption credit under Iowa Code section 422.12 of \$40, which leaves a tax amount of \$1,468 (\$1,508 - \$40). When \$1,468 is multiplied by the nonresident credit percentage of 62.5000, a nonresident credit of \$918 is computed.

EXAMPLE 2: A California resident, who was married, had \$20,000 of Iowa source net income in 2022 from an Iowa farm. This individual had an additional \$80,000 in net income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had a total net income of \$100,000 and a taxable income of \$70,000 due to allowable deductions.

The taxpayers had an Iowa income tax liability of \$4,583 after application of the personal exemption credits of \$80 under Iowa Code section 422.12. The taxpayers had an Iowa source net income of \$20,000 and a total net income of \$100,000. Therefore, the Iowa income percentage was 20.0000. Subtracting the Iowa income percentage of 20 percent from 100 percent leaves a nonresident credit percentage of 80.0000.

When the Iowa income tax liability of \$4,583 is multiplied by 80 percent, this results in a nonresident credit of \$3,666.

**304.5(2)** *Credit calculation for part-year residents of Iowa.*

a. Prior to the calculation of the part-year resident credit, an individual who is a resident of Iowa for part of the tax year shall compute taxable income in the same manner as a full-year Iowa resident. Therefore, a part-year resident would have the same initial Iowa income tax liability as a full-year Iowa resident with the same taxable income before computation of the part-year resident credit.

b. The part-year resident credit for a part-year resident is computed by adding all the individual's net income received while the taxpayer was a resident of Iowa and all the Iowa source net income received during the period of the tax year when the individual was a nonresident of Iowa, and dividing that sum by the taxpayer's total net income. See 701—Chapter 40 to determine a part-year resident's Iowa source net income and total net income. This Iowa income percentage is rounded to the nearest tenth of a percent (e.g., 1.2 percent) for tax years beginning before January 1, 2022, and to the nearest ten-thousandth of a percent (e.g., 1.2345 percent) for tax years beginning on or after January 1, 2022. The Iowa income percentage is then subtracted from 100 percent to arrive at the part-year resident credit percentage, which represents the percentage of the individual's total income which was earned outside of Iowa while a nonresident. The part-year resident credit percentage is multiplied by the net Iowa tax to compute the part-year resident credit. For purposes of this subrule, "net Iowa tax" means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12.

EXAMPLE 3: A single individual was a resident of Nebraska for the first half of 2022 and moved to Iowa on July 1, 2022, to accept a job in Des Moines. This individual earned \$20,000 from wages, \$200 from interest, and \$4,000 from a ranch in Nebraska from January 1, 2022, through June 30, 2022. In the second half of 2022, this person had wages of \$30,000, interest income of \$300, and \$4,000 from the Nebraska ranch. This part-year resident had \$14,000 of allowable deductions.

The part-year resident's total net income was \$58,500 and the Iowa source net income was \$34,300, which includes the Iowa wages, the Nebraska ranch income of \$4,000 earned during the individual's period of Iowa residence, as well as the interest income of \$300 earned during that time of the tax year. The Iowa taxable income for the part-year resident for 2022 was \$44,500 due to allowable deductions of \$14,000 (\$58,500 - \$14,000). The individual's Iowa income percentage was 58.6325, which was determined by dividing the Iowa source income of \$34,300 by the total income of \$58,500. Subtracting the Iowa income percentage of 58.6325 from 100 percent results in a part-year resident credit percentage

of 41.3675. The Iowa tax on total income was \$2,529, which was reduced to \$2,489 after subtraction of the personal exemption credit of \$40 under Iowa Code section 422.12.

When \$2,489 is multiplied by the part-year resident percentage of 41.3675, a part-year resident credit of \$1,030 is computed for this part-year resident.

EXAMPLE 4: A single individual moved from Minnesota to Iowa on July 1, 2022. This person earned \$5,000 in income from an Iowa farm in the first half of the tax year and another \$10,000 from this farm in the second half of the tax year. This person had \$10,000 in wages from employment in Minnesota in the first half of the year and another \$15,000 in wages from employment in Iowa in the second half of the tax year. This person had \$2,000 in interest from a bank in the first half of the year and \$2,000 in interest from a bank in the second half of the tax year.

The part-year resident's total net income was \$44,000 and the Iowa source net income was \$32,000, which consisted of \$15,000 in wages, \$2,000 in interest income, and \$15,000 in income from the Iowa farm. Since the farm was in Iowa, all farm income, including the income received while the individual was not a resident of Iowa, was taxable to Iowa. The individual's Iowa taxable income was \$34,250, which was computed after subtracting \$9,750 in allowable deductions (\$44,000 - \$9,750). The taxpayer's Iowa income tax liability was \$1,757 after subtraction of a personal exemption credit of \$40 under Iowa Code section 422.12.

The taxpayer's Iowa income percentage was 72.7273, which was computed by dividing the Iowa source net income of \$32,000 by the total net income of \$44,000. The part-year resident credit percentage was 27.2727, which was arrived at by subtracting the Iowa income percentage of 72.7273 from 100 percent. The taxpayer's part-year resident credit is \$479. This was determined by multiplying the Iowa income tax liability after personal exemption credit amount of \$1,757 by the part-year resident percentage of 27.2727.

This rule is intended to implement Iowa Code section 422.5.

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## **701—304.6(422) Out-of-state tax credits.**

**304.6(1) Definitions.** For purposes of this rule:

“*Foreign country*” means any country, other than the United States, and any political subdivision of that country.

“*Income tax*” means any direct tax imposed upon a taxpayer and measured by the taxpayer's income for a specified period of time. The out-of-state jurisdiction's characterization of the tax is not controlling in the department's determination of whether a tax is an income tax. Fees, penalty, and interest paid in connection with an income tax do not qualify. For purposes of this rule, the term “income tax” does not include a minimum tax imposed on preference items.

“*Pass-through entity*” means an entity taxed as a partnership for federal tax purposes, an S corporation, an estate, or a trust other than grantor trusts.

“*Regulated investment company*” means any domestic corporation that meets the requirements of Section 851 of the Internal Revenue Code and that has made a valid election under Section 853 of the Internal Revenue Code to have its shareholders' pro rata share of entity-level income tax paid by the electing corporation be deemed to have been paid by its shareholders. The term “regulated investment company” includes, but is not limited to, a mutual fund.

“*State*” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any political subdivision thereof.

“*Tiered owner*” means an owner or beneficiary of a pass-through entity that is itself a pass-through entity.

**304.6(2) General application.**

*a. Residents.* Iowa residents, including part-year residents, are allowed an out-of-state tax credit against the resident's Iowa income tax liability for income taxes owed and paid by the resident to another state or foreign country on income for which all of the following are true:

(1) The income was derived from sources within the other state or foreign country. In determining whether income is derived from sources within that other state or foreign country, Iowa statutes and rules on the sourcing of a nonresident's income shall govern.

(2) The income is subject to Iowa income tax. Income tax imposed by another state or foreign country on income that is not subject to Iowa income tax does not qualify for the credit.

(3) The income was earned while the taxpayer was an Iowa resident and is included on the resident's Iowa income tax return. The credit is allowable only if the taxpayer files an Iowa income tax return as a resident or part-year resident.

*b. Nonresidents.* Nonresidents of Iowa shall not claim the out-of-state tax credit.

**304.6(3) Rule for pass-through entities.**

*a. Direct owners.*

(1) If the Iowa resident is a direct partner, shareholder, or beneficiary of a pass-through entity that owed and paid entity-level income tax, or income tax on a composite return basis, to another state or foreign country on income derived from sources in that state or foreign country, the resident is allowed to treat the resident's pro rata share of that income tax as paid by the resident for purposes of the out-of-state tax credit, provided the resident's pro rata share of that income flows through to the resident and meets the requirements of paragraph 42.6(2) "a."

(2) The entity-level income tax or composite income tax paid to the other state or foreign country is the net state or foreign income tax actually owed and paid for the tax year on income taxed by that state or foreign country, as properly computed on the pass-through entity's income tax return or composite return (not a withholding return) in the other state or foreign country after reduction for all nonrefundable credits provided to the pass-through entity. Paragraph 42.6(6) "b" provides an additional limitation if the Iowa resident receives a refundable credit in the other state or foreign country for the Iowa resident's share of the income tax owed and paid by the pass-through entity. The resident's pro rata share of entity-level income tax or composite income tax paid by the pass-through entity shall be in the same proportion as the resident's pro rata share of income derived from sources in that state or foreign country, as properly reported on the entity's return in the other state or foreign country.

(3) To qualify, the pass-through entity must provide to the resident a statement identifying the jurisdiction and the resident's pro rata share of the income, income tax liability, and income tax paid in that jurisdiction.

EXAMPLE 1: Partnership W earns \$2,000 of income in state A, which imposes an entity-level income tax directly on the partnership. Partnership W pays \$100 of income tax to state A. Partnership W is owned 50 percent by Partnership X and 50 percent by individual Y, a resident of Iowa. Individual Y receives a statement from Partnership W showing that Partnership W earned \$2,000 of income and paid \$100 of entity-level income tax to state A and that individual Y's pro rata share of that income and entity-level income tax is \$1,000 and \$50, respectively. If that \$1,000 of income from Partnership W is subject to Iowa income tax and included on individual Y's Iowa income tax return as earned while an Iowa resident, individual Y will be entitled to treat the \$50 of income tax paid by Partnership W to state A as paid by individual Y in the computation of Y's out-of-state tax credit.

*b. Indirect owners.*

(1) If the Iowa resident is an indirect partner, shareholder, or beneficiary of a pass-through entity that paid entity-level income tax, or income tax on a composite return basis, to another state or foreign country on income derived from sources in that state or foreign country, the resident is allowed to treat the resident's pro rata share of that income tax as paid by the resident for purposes of the out-of-state tax credit if both of the following requirements are satisfied:

1. The tiered owner reduces the amount of the paying pass-through entity's income tax that the tiered owner reports to its partners, shareholders, or beneficiaries by the amount of any credit available from that other state or foreign country to the tiered owner for the tax liability of the paying pass-through entity.

2. The resident's pro rata share of that income flows through one or more tiered owners to the resident and meets the requirements of paragraph 42.6(2) "a."

(2) The entity-level income tax or composite income tax paid to the other state or foreign country is the net state or foreign income tax actually owed and paid for the tax year on income taxed by that state or foreign country, as properly computed on the pass-through entity's income tax return or composite tax return (not a withholding return) in the other state or foreign country, after reduction for all nonrefundable credits provided to the pass-through entity, and after further reduction by a tiered owner for any credits provided by that other state or foreign country to the tiered owner for the tax liability of the paying pass-through entity. Paragraph 42.6(6) "b" provides an additional limitation if the Iowa resident receives a refundable credit in the other state or foreign country for the Iowa resident's share of the income tax owed and paid by a pass-through entity. The resident's pro rata share of entity-level income tax or composite income tax paid by the pass-through entity shall be in the same proportion as the resident's pro rata share of income derived from sources in that state or foreign country, as properly reported on the entity's return in the other state or foreign country, after flowing through one or more tiered pass-through entities to the resident.

(3) To qualify, the paying pass-through entity must provide to the tiered owner a statement identifying the jurisdiction and the tiered owner's pro rata share of the income, income tax liability, and income tax paid in that jurisdiction. The tiered owner, in turn, must provide the indirect partner, shareholder, or beneficiary with a statement that includes all of the following information:

1. The jurisdiction to which income tax was paid; the paying pass-through entity and any other tiered owner through which the income flowed; and the indirect partner's, shareholder's, or beneficiary's pro rata share of the paying pass-through entity's income.

2. The indirect partner's, shareholder's, or beneficiary's pro rata share of the paying pass-through entity's income tax liability and income tax paid to the other jurisdiction after reduction for any credit available to the tiered owner for the tax liability of the paying pass-through entity. If no such credit was provided to the tiered owner, the statement must include a declaration from the tiered owner to that effect.

EXAMPLE 2: Assume the same facts as Example 1. Partnership X (a tiered owner) receives a statement from Partnership W which shows that W earned \$2,000 of income in state A and paid \$100 of entity-level income tax to state A and that Partnership X's pro rata share of that income and entity-level income tax is \$1,000 and \$50, respectively. Partnership X is not eligible for a credit in state A for its share of the entity-level income tax paid by Partnership W. Partnership X is owned 50 percent by individual Z, a resident of Iowa. Individual Z then receives a statement from Partnership X indicating that Partnership X was not eligible for a credit for the tax paid by Partnership W, that Z's pro rata share of Partnership W's income taxed by state A is \$500, and that Z's pro rata share of Partnership W's income tax imposed by and paid to state A is \$25. If that \$500 of income from Partnership W flows through Partnership X to individual Z, is subject to Iowa income tax, and is included on Z's Iowa income tax return as earned while an Iowa resident, Z will be entitled to treat the \$25 of income tax paid by Partnership W to state A as paid by Z in the computation of Z's out-of-state tax credit.

EXAMPLE 3: Assume the same facts as Example 2, except that Partnership X (a tiered owner) is eligible for a \$50 credit in state A for its share of the entity-level income tax paid by Partnership W to state A. Partnership X must reduce its share of Partnership W's entity-level income tax (\$50) that it can report to its partners by the amount of the credit provided by state A for that tax (\$50). Therefore, Partnership X cannot pass Partnership W's entity-level income tax through to individual Z, and Z cannot treat a pro rata share of Partnership W's entity-level income tax as paid by Z. However, if Partnership X is itself subject to and pays an entity-level income tax in state A, it may be allowed to pass through, and individual Z may be allowed to treat as paid by Z a pro rata share of the entity-level income tax paid by Partnership X in state A in the same manner as described in paragraph 42.6(3) "a."

**304.6(4) Rule for regulated investment companies.** If the Iowa resident is a shareholder of a regulated investment company making an election under Section 853 of the Internal Revenue Code, the resident shareholder is allowed an out-of-state tax credit for the resident shareholder's pro rata share of entity-level income tax paid to a foreign country or possession of the United States by the regulated investment company and treated as paid by the resident shareholder under Section 853 of the Internal Revenue Code if the income taxed by the foreign country or possession of the United States is also subject to tax in Iowa and is included on the resident shareholder's Iowa income tax return as earned

while an Iowa resident. To qualify, the regulated investment company must provide to the resident shareholder a statement identifying the jurisdiction and the resident shareholder's pro rata share of the income, income tax liability, and income tax paid in that jurisdiction.

EXAMPLE 4: Individual D is a resident of Iowa and a shareholder of a mutual fund that paid income tax to foreign jurisdictions and that made an election under Section 853 of the Internal Revenue Code. On the annual, year-end tax statement, the mutual fund reported \$2,000 of income to individual D and \$10 of foreign tax paid with respect to D's income. If that \$2,000 of income from the mutual fund is subject to Iowa income tax and included on individual D's Iowa income tax return as earned while an Iowa resident, D will be entitled to treat the \$10 of income tax paid by the mutual fund to the foreign jurisdictions as paid by D in the computation of D's out-of-state tax credit.

**304.6(5) Computing the out-of-state tax credit—preliminary calculation.**

*a. Required form.* The tax credit must be computed on the IA 130, Iowa Out-of-State Tax Credit Schedule. Married taxpayers filing separate Iowa returns, or filing separately on a combined Iowa return, must complete a separate IA 130 for each spouse.

*b. Computed separately by jurisdiction.* The tax credit must be computed separately for each out-of-state jurisdiction. A separate IA 130 is required for each out-of-state jurisdiction. However, separate computations and separate IA 130s are not required for foreign income taxes paid by a regulated investment company.

*c. Computed separately by income tax type.* The tax credit must be computed separately for regular income tax and special lump-sum distribution tax. If the taxpayer was assessed a special tax on a lump-sum distribution by another state or foreign country, compute the tax credit separately under these rules using only the lump-sum distribution and lump-sum distribution tax imposed in Iowa and imposed in the other state or foreign country. A lump-sum distribution taxed by another state or foreign country shall not be included as part of gross income. A minimum tax or income tax imposed on preference items derived from sources in another state or foreign country are not eligible for the out-of-state tax credit under this rule. For rules on the out-of-state tax credit with respect to minimum tax paid, see rule 701—42.7(422).

*d. Full-year Iowa residents.* For a taxpayer who is an Iowa resident for the entire tax year, the income tax paid to the other state or foreign country is the sum of the following amounts:

(1) Income tax treated as paid by the resident under subrules 42.6(3) and 42.6(4). The income tax shall be treated as paid by the resident for the tax year that the out-of-state pass-through income is considered taxable Iowa income to the resident.

(2) The net state or foreign income tax actually owed and paid by the resident for the tax year on income qualifying under paragraph 42.6(2) "a," as properly computed on the resident's income tax return in the other state or foreign country, less all nonrefundable credits provided to the resident, and less any refundable credits provided to the resident for entity-level income taxes or composite income taxes paid by a pass-through entity. See Example 5 below.

*e. Part-year Iowa residents.* A taxpayer who is a part-year resident of Iowa may only claim the out-of-state tax credit against the taxpayer's Iowa income tax liability for income tax paid to another state or foreign country on income qualifying under paragraph 42.6(2) "a" that is earned during the period of the tax year that the taxpayer was an Iowa resident. The income tax paid to the other state or foreign country is the sum of the following amounts:

(1) Income tax treated as paid by the resident under subrules 42.6(3) and 42.6(4) on income earned during the period of the tax year that the taxpayer was an Iowa resident. The income tax shall be treated as paid by the resident for the tax year that the out-of-state pass-through income is considered taxable Iowa income.

(2) The net state or foreign income tax actually owed and paid by the taxpayer for the tax year on income qualifying under paragraph 42.6(2) "a" that was earned during the period of the tax year that the taxpayer was an Iowa resident, as properly computed on the resident's income tax return in the other state or foreign country, less all nonrefundable credits provided to the resident, and less any refundable credits

provided to the resident for entity-level income taxes or composite income taxes paid by a pass-through entity. See Example 6 below.

**304.6(6) Computing the out-of-state tax credit—additional limitations and considerations.**

*a. Maximum credit.* The out-of-state tax credit cannot exceed the amount of Iowa income tax that would have been imposed on the same income which was taxed by the other state or foreign country. The maximum out-of-state tax credit must be computed according to the formula in this paragraph. If gross income is subject to tax in a jurisdiction at more than one level (i.e., at the pass-through entity level and at the individual level), it shall only be counted once for purposes of computing the maximum credit.

(1) Full-year Iowa residents. Gross income qualifying under paragraph 42.6(2) “a” and taxed by the other state or foreign country shall be divided by the total gross income of the Iowa resident taxpayer. This quotient, multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa, shall be the maximum tax credit. For tax years beginning before January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest tenth of a percent (e.g., 1.2 percent). For tax years beginning on or after January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest ten-thousandth of a percent (e.g., 1.2345 percent). For purposes of this subparagraph, “net Iowa tax” means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12.

EXAMPLE 5: Taxpayer A was an Iowa resident for the entire tax year but commuted across the border and worked in state Z. Taxpayer A had wages of \$30,000 in state Z. Taxpayer A filed an income tax return in state Z reporting the \$30,000 of wages and had state Z income tax liability of \$500, which is A’s preliminary out-of-state credit under subrule 42.6(5). Taxpayer A also had income of \$10,000 from rental of an Iowa farm and another \$10,000 in interest income from a personal savings account. Taxpayer A’s total gross income for the tax year was \$50,000. Thus, 60 percent ( $\$30,000 \div \$50,000$ ) of Taxpayer A’s income was earned in state Z. Taxpayer A’s net Iowa tax on total gross income was \$817, which results in a maximum out-of-state credit of \$490 ( $\$817 \times .60$ ). Therefore, the out-of-state tax credit allowed is \$490, because the maximum credit of \$490 was less than the preliminary credit of \$500.

(2) Part-year Iowa residents. Gross income qualifying under paragraph 42.6(2) “a” that was earned during the period of the tax year that the taxpayer was an Iowa resident and taxed by the other state or foreign country shall be divided by the total gross income of the Iowa taxpayer earned while an Iowa resident or otherwise sourced to Iowa. This quotient, multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa, shall be the maximum tax credit. For tax years beginning before January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest tenth of a percent (e.g., 1.2 percent). For tax years beginning on or after January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest ten-thousandth of a percent (e.g., 1.2345 percent). For purposes of this subparagraph, “net Iowa tax” means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12 and after reduction for the nonresident and part-year resident credit in rule 701—42.5(422).

EXAMPLE 6: Taxpayer B was a part-year Iowa resident for the tax year. Taxpayer B resided in state Z for the first six months of the year and moved to Iowa on July 1 but continued to commute across the border and work in state Z. Taxpayer B was employed in state Z for the entire year and had wages of \$30,000 in state Z. Taxpayer B filed an income tax return in state Z reporting the \$30,000 of wages and had state Z income tax liability of \$1,000. The amount of gross income taxed by state Z while taxpayer B was an Iowa resident was \$15,000 (50 percent of the \$30,000 of state Z wages). Since 50 percent of the income earned in state Z was earned while taxpayer B was a resident of Iowa, the preliminary out-of-state credit under subrule 42.6(5) was \$500 ( $\$1,000 \times .50$ ). Taxpayer B also had \$10,000 in farm rental income from farmland located in Iowa. Taxpayer B’s gross income earned while an Iowa resident and otherwise sourced to Iowa was \$25,000 ( $\$15,000$  of wages +  $\$10,000$  farm rental income). Thus, 60 percent of the gross income was earned in state Z while an Iowa resident ( $\$15,000 \div \$25,000$ ). Taxpayer B’s net Iowa tax on total gross income was \$1,094, which results in a maximum out-of-state credit of \$656 ( $\$1,094 \times .60$ ). Therefore, the out-of-state tax credit allowed is \$500, because the preliminary credit of \$500 was less than the maximum credit of \$656.

*b. Refund attributable to credit for entity-level income tax or composite income tax paid by a pass-through entity.* If the resident claims a refundable tax credit in another state or foreign country for entity-level income tax or composite income tax paid by a pass-through entity, that refundable credit reduces the resident's income tax liability in that state or foreign country as described in subparagraphs 42.6(5) "d"(2) and 42.6(5) "e"(2). However, any refund attributable to that refundable credit also reduces the amount of income tax treated as paid by the resident under subrules 42.6(3) and 42.6(4). In computing this credit reduction, the refundable credit for entity-level income tax or composite income tax paid by a pass-through entity shall be applied on the other state's or foreign country's income tax return after all nonrefundable credits, but before any other refundable credit. The credit reduction is required whether the resident receives the refund or applies the amount to a different tax liability or tax period.

EXAMPLE 7: Individual B, a resident of Iowa and a 50 percent owner of Partnership P doing business in state Z, receives a statement from Partnership P in accordance with subparagraph 42.6(3) "a"(3) showing that P earned income in and paid entity-level income tax to state Z and individual B's pro rata share of that income and that entity-level income tax is \$5,000 and \$250, respectively. However, individual B also receives a \$250 refundable credit from state Z for B's share of the entity-level income tax paid by Partnership P. Individual B files an individual income tax return in state Z to report B's pro rata share of income from Partnership P and calculates a tentative income tax of \$200, before application of the refundable credit. Individual B applies the refundable tax credit against that tentative income tax and calculates an income tax liability of \$0 and a refund of \$50 from state Z. Therefore, individual B must reduce the \$250 of entity-level income tax treated as paid by B under subrule 42.6(3) to \$200 (\$250 - \$50). Individual B files an Iowa income tax return which includes the \$5,000 of income from Partnership P earned in state Z and calculates a preliminary out-of-state tax credit under subrule 42.6(5) of \$200.

*c. Taxpayers claiming the S corporation apportionment tax credit.* A taxpayer who is a shareholder of an S corporation and who has income that was apportioned outside of Iowa through a claim to the S corporation apportionment tax credit is not permitted to claim the out-of-state tax credit on the same S corporation income. Income tax paid by the resident or a pass-through entity with respect to the S corporation income shall not be included in the resident's preliminary credit calculation in paragraph 42.6(5) "d" or "e." Gross income from the S corporation shall not be included in the resident's maximum credit calculation in paragraph 42.6(6) "a."

*d. Married taxpayers using a different filing status in the other state or foreign country.* If married taxpayers use a separate filing status in the other state or foreign country, but file jointly for Iowa tax purposes, the taxpayers must combine both spouses' income and income tax paid in the other state or foreign country for purposes of computing the out-of-state tax credit. If married taxpayers file jointly in the other state or foreign country, but file separate Iowa returns, or separately on a combined Iowa return, the taxpayers must prorate the income tax paid in the other state or foreign country according to each spouse's respective gross income earned in that state or foreign country.

*e. Tax on income that does not flow through to resident.* Entity-level income tax or composite income tax paid by a pass-through entity on income that does not flow through to the Iowa resident and meet the requirements of paragraph 42.6(2) "a" does not qualify for the out-of-state tax credit. For example, a LIFO recapture tax installment paid by an S corporation in another state would not qualify because that tax is measured by the income of the entity in the last tax year it was a C corporation, when such income did not flow through to the shareholders. Also, income tax paid by a trust in another state on income not distributed to the beneficiaries would not qualify because that income did not flow through to the beneficiaries. These examples are not intended to be exhaustive.

*f. Recalculating credit following adjustments in the other jurisdiction.* If the taxpayer or the taxpayer's pass-through entity amends the amount of income or income tax liability reported and paid to the other state or foreign country, either through an amended return, audit, or otherwise, the taxpayer shall file an amended Iowa return and recalculate the allowable out-of-state tax credit. Any refund must be requested by the later of three years after the due date of the return, or one year after payment of the tax, as prescribed in Iowa Code section 422.73(2) "a." Iowa law does not provide additional time to request a refund following an audit by another state or foreign country.

*g. Nonrefundable and nontransferable.* The out-of-state tax credit cannot exceed the resident's tax liability; thus, no amount is eligible to be carried forward to any future tax year. The credit may not be transferred to any other person.

**304.6(7) Claiming the out-of-state tax credit—supporting documentation.** To claim the out-of-state tax credit, the taxpayer claiming the credit must submit the following to the department with the return or upon request as indicated below:

*a. Out-of-state tax return.* A copy of the income tax return filed with the other state or foreign country must be submitted. The department may further request a copy of the return which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

*b. Iowa income tax return.* To claim the out-of-state tax credit, a taxpayer must file an Iowa income tax return for the tax year for which the credit is claimed. A taxpayer must file an Iowa income tax return to claim the out-of-state tax credit even if the taxpayer would not otherwise have an obligation to file an Iowa income tax return for the year for which the credit is claimed.

*c. Iowa out-of-state tax credit schedule.* An IA 130, Iowa Out-of-State Tax Credit Schedule, must be submitted for the tax year for which the credit is claimed.

*d. Pass-through entity statements.* A taxpayer who is claiming an out-of-state tax credit for entity-level income tax or composite income tax paid by a pass-through entity must submit a statement from the pass-through entity that meets the requirements of subrule 42.6(3). The pass-through entity's actual income tax returns must be submitted to the department upon request. A taxpayer who is claiming an out-of-state tax credit for entity-level income tax paid by a regulated investment company must submit a statement from the regulated investment company that meets the requirements of subrule 42.6(4).

*e. Additional foreign income tax documentation.* A taxpayer who is claiming the out-of-state tax credit for income taxes paid to a foreign country must provide the department with a copy of federal Form 1116, Foreign Tax Credit, if that form was required to be submitted with the taxpayer's federal income tax return. This submission requirement does not mean that all amounts on federal Form 1116 qualify for the Iowa out-of-state tax credit. Additionally, if the income tax was paid in foreign currency, the taxpayer shall include a detailed explanation of how the taxpayer figured the conversion rate. The conversion rate is the rate of exchange in effect on the day the taxpayer paid the foreign income tax.

*f. Proof of payment.* Upon request, the taxpayer must provide the department with a photocopy, or other similar reproduction, of either:

- (1) The receipt issued by the other state or foreign country for payment of the tax, or
- (2) The canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (e.g., wage or salary income, rental income, business income) of total income on which such tax was paid.

This rule is intended to implement Iowa Code section 422.8.

[ARC 6029C, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22]

### **701—304.7(422) Out-of-state tax credit for minimum tax.**

**304.7(1) General rule.** Iowa residents are allowed an out-of-state tax credit for minimum taxes or income taxes paid to another state or foreign country on preference items derived from sources outside of Iowa. Part-year residents who pay minimum tax to another state or foreign country on preference items derived from sources outside Iowa will be allowed an out-of-state tax credit only to the extent that the minimum tax paid to the other state or foreign country relates to preference items that occurred during the period the taxpayer was an Iowa resident. Taxpayers who were nonresidents of Iowa for the entire tax year are not eligible for an out-of-state tax credit on their Iowa returns for minimum taxes paid to another state or foreign country on preference items.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return and pays minimum tax in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share

of the minimum tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.7(2).

However, if the partnership, S corporation, limited liability company, or trust is directly subject to minimum tax in another state and the minimum tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the minimum tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state tax purposes and a corporation income tax is imposed directly on the S corporation which includes minimum tax, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax, including minimum tax, paid to the other state.

**304.7(2) *Limitation of out-of-state tax credit for minimum tax.*** The limitation on the out-of-state tax credit for minimum tax is that the credit shall not exceed the Iowa minimum tax that would have been computed on the same preference items which were taxed by the other state or foreign country. The limitation may be determined according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer. This quotient, multiplied by the state minimum tax on the total of preference items as if entirely earned in Iowa, shall be the maximum credit against the Iowa minimum tax. However, if the minimum tax imposed by the other state or foreign country is less than the minimum tax computed under the limitation formula, the out-of-state credit for minimum tax will not exceed the minimum tax imposed by the other state or foreign country.

No out-of-state credit will be allowed on the Iowa return for minimum tax paid to another state or foreign country to the extent that the minimum tax of the other state or foreign country is imposed on items of tax preference not subject to the Iowa minimum tax. In addition, no out-of-state credit will be allowed for minimum tax paid to another state or foreign country of capital gains or losses from distressed sales which are excluded from the Iowa minimum tax. Capital gains or losses from distressed sales are described in rule 701—40.27(422).

**304.7(3) *Proof of claim for out-of-state tax credit for minimum tax.*** The out-of-state credit for minimum tax may be claimed on the return of a taxpayer if proof of payment of minimum tax to the state or foreign country is included with the return. Documents needed for proof of payment are a photocopy of the minimum tax form of the state or country to which minimum tax was paid as well as instructions from the minimum tax form or other information which specifies how the minimum tax is imposed and what preference items are subject to the minimum tax of that state or foreign country.

In the case of audit by the department of a taxpayer claiming an out-of-state tax credit for minimum tax paid, the department may require additional proof of payment of the out-of-state tax credit. The department will accept any of the following documents as verification of payment of the minimum tax:

- a. A photocopy, or other similar reproduction, of either:
  - (1) The receipt issued by the other state or foreign country for payment of the tax, including the minimum tax, or
  - (2) The canceled check (both sides) which was used for payment of the minimum tax to the other state or foreign country.
- b. A copy of the return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and which shows that the income tax, including the minimum tax, has been paid.

This rule is intended to implement Iowa Code section 422.8.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.8(422) Withholding and estimated tax credits.** An employee from whose wages tax is withheld shall claim credit for the tax withheld on the employee's income tax return for the year during which the tax was withheld. Credit will be allowed only if a copy of the withholding statement is

attached to the return. Taxpayers who have made estimated income tax payments shall claim credit for the estimated tax paid for the taxable year.

This rule is intended to implement Iowa Code section 422.16.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.9(422) Motor fuel credit.** An individual, partnership, limited liability company, or S corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual, partnership, limited liability company, or S corporation which holds a motor fuel tax refund permit under Iowa Code section 452A.18 when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The motor fuel income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

The motor fuel tax credits for fuel taxes paid by partnerships, limited liability companies, and S corporations are not claimed on returns filed for the partnerships, limited liability companies, and S corporations. Instead, the pro rata shares of the motor fuel tax credits are allocated to the partners, members, and shareholders in the same ratio as incomes are allocated to the partners, members, and shareholders. A schedule must be attached to the individual's returns showing the distribution of gallons and the amount of credit claimed by each partner, member, or shareholder.

The partnership, limited liability company, or S corporation must attach to its return a schedule showing the allocation to each partner, member, or shareholder of the motor fuel purchased by the partnership, limited liability company, or S corporation which qualifies for the credit.

This rule is intended to implement Iowa Code sections 422.110 and 422.111.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.10(422) Alternative minimum tax credit for minimum tax paid in a prior tax year.** Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried over to the following tax year to be applied against the regular income tax liability for that period. The minimum tax credit is computed on Form IA 8801.

**304.10(1) Examples of computation of the minimum tax credit and carryover of the credit.**

EXAMPLE 1. The taxpayers reported \$5,000 of minimum tax for 2007. For 2008, the taxpayers reported regular tax of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayers had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. The taxpayers reported \$2,500 of minimum tax for 2007. For 2008, the taxpayers reported regular tax of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

**304.10(2) Minimum tax credit for nonresidents and part-year residents.** Nonresident and part-year resident taxpayers who paid Iowa minimum tax in tax years beginning on or after January 1, 1987, are

eligible for the minimum tax credit to the extent that the minimum tax they paid was attributable to tax preferences and adjustments. Therefore, if a nonresident or part-year resident taxpayer had Iowa source tax preferences or adjustments, then all the minimum tax that was paid would qualify for the minimum tax credit.

The minimum tax credit for a tax year as computed above applies to the regular income tax liability less the nonresident part-year credit to the extent this regular tax amount exceeds the minimum tax for the tax year. To the extent the credit is not used, the credit can be carried over to the next tax year.

This rule is intended to implement Iowa Code section 422.11B.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 2829C, IAB 11/23/16, effective 1/1/17; Editorial change: IAC Supplement 11/2/22]

**701—304.11(15,422) Research activities credit.** The taxes imposed on individual income shall be reduced by a state tax credit for increasing research activities in this state. For individual income tax, the requirements of the research activities credit are described in Iowa Code section 422.10. This rule explains terms not defined in the statute and procedures for claiming the credit.

**304.11(1) Definitions.**

“*Accountant*” means a person authorized under Iowa Code chapter 542 to engage in the practice of public accounting in Iowa as defined in Iowa Code section 542.3(23) or authorized to engage in such practice in another state under a similar law of another state.

“*Architect*” means a person licensed under Iowa Code chapter 544A or a similar law of another state.

“*Aviation and aerospace*” means the design, development or production of aircraft, rockets, missiles, spacecraft and other machinery and equipment that operate in aerospace.

“*Collection agency*” means a person primarily engaged in the business of collecting debt, including but not limited to consumer debt collection subject to the provisions of the federal Fair Debt Collections Practices Act in 15 U.S.C. §1692 et seq., the Iowa debt collection practices Act in Iowa Code sections 537.7101 through 537.7103, or other similar state law.

“*Finance or investment company*” means a person primarily engaged in finance or investment activities broadly consisting of the holding, depositing, or management of a customer’s money or assets for investment purposes, or the provision of loans or other similar financing or credit to customers. “Finance or investment company” includes but is not limited to a person organized or licensed under Iowa Code chapter 524, 533, or 533D or other similar state or federal law, or an investment company as defined in 15 U.S.C. §80a-3.

“*Life sciences*” means the sciences concerned with the study of living organisms, including agriscience, biology, botany, zoology, microbiology, physiology, biochemistry, and related subjects.

“*Manufacturing*” means the same as defined in 2018 Iowa Acts, Senate File 2417, section 183.

“*Publisher*” means a person whose primary business is the publishing of books, periodicals, newspapers, music, or other works for sale in any format.

“*Real estate company*” means a person licensed under Iowa Code chapter 543B or otherwise primarily engaged in acts constituting dealing in real estate as described in Iowa Code section 543B.6.

“*Retailer*” means a person that primarily engages in sales of personal property as defined in 2018 Iowa Acts, Senate File 2417, section 158, or services directly to an ultimate consumer. A business that primarily makes sales for resale is not a retailer.

“*Software engineering*” means the detailed study of the design, development, operation, and maintenance of software.

“*Transportation company*” means a person whose primary business is the transportation of persons or property from one place to another.

“*Wholesaler*” means a person that primarily engages in buying large quantities of goods and reselling them in smaller quantities to retailers or other merchants who in turn sell those goods to the ultimate consumer.

**304.11(2) Requirement that the business claim and be allowed the federal credit.** To claim this credit, a taxpayer’s business must claim and be allowed a research credit for such qualified research expenses under Section 41 of the Internal Revenue Code for the same taxable year as the taxpayer’s business is claiming the credit.

*a. Being “allowed” the federal credit.* For purposes of this subrule, a federal credit is “allowed” if the taxpayer meets all requirements to claim the credit under Section 41 of the Internal Revenue Code and any applicable federal regulation and Internal Revenue Service guidance and such credit has not been disallowed by the Internal Revenue Service.

*b. Applicability of requirement to pass-throughs.* If the individual received the Iowa credit through a pass-through entity, the pass-through entity that conducted the research must have claimed and been allowed the federal credit in order for the individual to claim the Iowa credit.

*c. Impact of federal audit.* If the Internal Revenue Service audits or otherwise reviews the return and disallows the credit, the taxpayer shall file an amended Iowa return along with supporting schedules, including an amended federal return or a copy of the federal revenue agent’s report and notification of final federal adjustments, to add back the Iowa credit to the extent not previously disallowed by the department.

*d. Authority of the department.* Nothing in this subrule shall limit the department’s authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 422.10, regardless of inaction, a settlement, or a determination by the Internal Revenue Service under Section 41 of the Internal Revenue Code.

**304.11(3) Calculating the credit.** For information on how the credit is calculated, see Iowa Code section 422.10.

**304.11(4) Claiming the tax credit.**

*a. Forms.* The credit must be claimed on the forms provided on the department’s website and must include all information required by the forms.

*b. Allocation to the individual owners of an entity or beneficiaries of an estate or trust.* An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity shall be based upon the pro rata share of the individual’s earnings from a partnership, S corporation, estate or trust.

*c. Refundability.* Any research credit in excess of the individual’s tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual’s tax liability for the following tax year.

*d. Transferability.* Tax credit certificates shall not be transferred to any other person.

*e. Enterprise zone claimants.* The enterprise zone program was repealed on July 1, 2014. However, any supplemental research activities credit earned by businesses pursuant to Iowa Code section 15.335 and approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

This rule is intended to implement Iowa Code sections 15.335 and 422.10 as amended by 2018 Iowa Acts, Senate File 2417.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 0337C, IAB 9/19/12, effective 10/24/12; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 1545C, IAB 7/23/14, effective 8/27/14; ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 4143C, IAB 11/21/18, effective 12/26/18; Editorial change: IAC Supplement 11/2/22]

**701—304.12(422) New jobs credit.** A tax credit is available to an individual who has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

**304.12(1) Definitions.**

*a.* The term “new jobs” means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa industrial new jobs training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in this state.

*b.* The term “jobs directly related to new jobs” means those jobs which directly support the new jobs but do not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee’s vacant position is filled by a new employee. The burden of proof that a job is directly related to new jobs is on the taxpayer.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line, transfers an in-state employee to be foreman of the new product line but does not fill

the transferred employee's position. The new foreman's position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee's old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be foreman of the new product line and fills the transferred employee's position with a new employee. The new foreman's position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee's old position was filled by a new employee.

c. The term "taxable wages" means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code section 96.1A(36) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal year taxpayers, "taxable wages" shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer's fiscal year begins.

d. The term "agreement" means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term "agreement" also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitments relating to training programs and new jobs.

e. The term "base employment level" means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under Iowa Code chapter 260E on the date of the agreement.

f. The term "project" means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

g. The term "industry" means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, and professional services. "Industry" does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. "Industry" is a business engaged in the above-listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

h. The term "new employees" means the same as new jobs or jobs directly related to new jobs.

i. The term "full-time job" means any of the following:

- (1) An employment position requiring an average work week of 35 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 or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule, each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
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)

**304.12(2)** *How to compute the credit.* The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement, the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement, only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement, the taxpayer hires two additional new employees under the agreement to replace the two employees that left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement, three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement, 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

**304.12(3)** *When the credit can be taken.* The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement, the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement, two of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three, the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the 7 new employees.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the Iowa new jobs credit from a partnership, subchapter S corporation, estate or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust. All partners in a partnership, shareholders in a subchapter S corporation and beneficiaries in an estate or trust shall elect to take the Iowa new jobs credit the same year.

For tax years beginning prior to January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code sections 422.12 and 422.12B may be carried forward for ten years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for ten years or until it is used, whichever is the earlier.

This rule is intended to implement Iowa Code section 422.11A.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

### **701—304.13(422) Earned income credit.**

**304.13(1)** *Tax years beginning before January 1, 2007.* Effective for tax years beginning on or after January 1, 1990, an individual is allowed an Iowa earned income credit equal to a percentage of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The Iowa earned income credit is nonrefundable; therefore, the credit may not exceed the remaining income tax liability of the taxpayer after the personal

exemption credits and the other nonrefundable credits are deducted. The percentage of the earned income credit for tax years beginning in the 1990 calendar year is 5 percent. The percentage of the earned income credit for tax years beginning on or after January 1, 1991, is 6.5 percent.

For federal income tax purposes, the earned income credit is available for a low-income worker who maintains a household in the United States that is the principal place of abode of the worker and a child or children for more than one-half of the tax year or the worker must have provided a home for the entire tax year for a dependent parent. In addition, the worker must be (1) a married person who files a joint return and is entitled to a dependency exemption for a son or daughter, adopted child or stepchild; (2) a surviving spouse; or (3) an individual who qualifies as a head of household as described in Section 2(b) of the Internal Revenue Code. The federal earned income credit for a taxpayer is determined by computing the taxpayer's earned income on a worksheet provided in the federal income tax return instructions and determining the allowable credit from a table included in the instructions for the 1040 or 1040A. For purposes of the credit, a taxpayer's earned income includes wages, salaries, tips, or other compensation plus net income from self-employment.

In the case of married taxpayers who filed a joint federal return and who elected to file separate state returns or separately on the combined return form, the Iowa earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents and part-year residents of Iowa are allowed the same earned income credits as resident taxpayers.

**304.13(2)** *Tax years beginning on or after January 1, 2007.* Effective for tax years beginning on or after January 1, 2007, but beginning before January 1, 2013, an individual is allowed an Iowa earned income credit equal to 7 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. For tax years beginning on or after January 1, 2013, but beginning before January 1, 2014, an individual is allowed an Iowa earned income tax credit equal to 14 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. For tax years beginning on or after January 1, 2014, an individual is allowed an Iowa earned income tax credit equal to 15 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The Iowa earned income credit is refundable; therefore, the credit may exceed the remaining income tax liability of the taxpayer after the personal exemption credits and other nonrefundable credits are deducted.

In the case of married taxpayers who filed a joint federal return and who elected to file separate state returns or separately on the combined return form, the Iowa earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents or part-year residents of Iowa must determine the Iowa earned income tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or separately on the combined return form, the Iowa earned income credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

**EXAMPLE:** A married couple lives in Omaha, Nebraska. One spouse worked in Iowa in 2007 and had wages and other income from Iowa sources of \$12,000. That spouse had a federal adjusted gross income from all sources of \$15,000. The other spouse had no Iowa source net income and had a federal adjusted gross income from all sources of \$10,000. The taxpayers had a federal earned income credit of \$2,800.

The federal earned income credit of \$2,800 multiplied by 7 percent equals \$196. The ratio of Iowa source net income of \$12,000 divided by total source net income of \$25,000 equals 48 percent. The Iowa earned income tax credit equals \$196 multiplied by 48 percent, or \$94.

This rule is intended to implement Iowa Code section 422.12B as amended by 2013 Iowa Acts, Senate File 295.

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**701—304.14(15) Investment tax credit—new jobs and income program and enterprise zone program.**

**304.14(1) General rule.** An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available for businesses approved by the economic development authority under the new jobs and income program and the enterprise zone program. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the investment tax credit under the high quality job creation program. Any investment tax credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid and can be claimed on tax returns filed after July 1, 2005. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit shall be taken in the year the qualifying asset is placed in service. The enterprise zone program was repealed on July 1, 2014. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. For business applications received by the economic development authority on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 42.29(2).

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**304.14(2) Investment tax credit—value-added agricultural products or biotechnology-related processes.** For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that

have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year for this program and eligible businesses described in subrule 42.29(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects, for a cooperative that is not required to file an Iowa income tax return because it is exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See 701—subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings in the cooperative. The economic development authority will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed.

**304.14(3) *Repayment of credits.*** If an eligible business fails to maintain the requirements of the new jobs and income program or the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program or the enterprise zone program because this repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a.* One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b.* Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code section 15.333 as amended by 2010 Iowa Acts, Senate File 2380.

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**701—304.15(422) Child and dependent care credit.** There is a child and dependent care credit which is refundable to the extent the amount of the credit exceeds the taxpayer's income tax liability less other applicable income tax credits. If a taxpayer claims the child and dependent care credit, the taxpayer cannot claim the early childhood development credit described in rule 701—42.31(422).

**304.15(1) Computation of the Iowa child and dependent care credit.** The Iowa child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. For tax years beginning on or after January 1, 2015, the Iowa credit is computed without regard to whether or not the federal credit was limited to the taxpayer's federal tax liability. In addition, for tax years beginning on or after January 1, 2015, the Iowa credit will be allowed even if the taxpayer's federal adjusted gross income is below \$0. The credit is computed so that taxpayers with lower net incomes are allowed higher percentages of their federal child care credit than taxpayers with higher net incomes. The following is a schedule showing the percentages of federal child and dependent care credits allowed on the taxpayers' Iowa returns on the basis of the net incomes of the taxpayers.

* Net income	Percentage of federal credit allowed for tax years beginning on or after January 1, 2006, and before January 1, 2021	Percentage of federal credit allowed for tax years beginning on or after January 1, 2021
Less than \$10,000	75%	75%
\$10,000 or more but less than \$20,000	65%	65%
\$20,000 or more but less than \$25,000	55%	55%
\$25,000 or more but less than \$35,000	50%	50%
\$35,000 or more but less than \$40,000	40%	40%
\$40,000 or more but less than \$45,000	30%	30%
\$45,000 or more but less than \$90,000	No Credit	30%
\$90,000 or more	No Credit	No Credit

\*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or to file separately on the combined return form for Iowa purposes, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of their combined net incomes. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's net income relates to the combined net income of the taxpayers.

**304.15(2) Examples of computation of the Iowa child and dependent care credit.** The following are examples of computation of the child and dependent care credit and the allocation of the credit between spouses in situations where married taxpayers have filed joint federal returns and are filing separate Iowa returns or are filing separately on the combined Iowa return form.

EXAMPLE A: A married couple has a combined net income of \$40,000. Both spouses were employed. They had a federal child and dependent care credit of \$600 which related to expenses incurred for care

of their two small children. One of the spouses had a net income of \$30,000 and the second spouse had a net income of \$10,000.

The taxpayers' Iowa child and dependent care credit was \$180 since they were entitled to an Iowa child and dependent care credit of 30 percent of their federal credit of \$600. If the taxpayers elect to file separate Iowa returns, the \$180 credit would be allocated between the spouses on the basis of each spouse's net income as it relates to the combined net income of both spouses as shown below:

$$\begin{aligned}
 \$180 \times \frac{\$30,000}{\$40,000} &= \$135 && \text{child and dependent care credit for spouse} \\
 &&& \text{with \$30,000 net income} \\
 \\
 \$180 \times \frac{\$10,000}{\$40,000} &= \$45 && \text{child and dependent care credit for spouse} \\
 &&& \text{with \$10,000 net income}
 \end{aligned}$$

EXAMPLE B: A married couple filed their Iowa return separately on a combined return. Both spouses were employed. They had a federal child and dependent care credit of \$800 which related to expenses incurred for care of their children. One spouse had a net income of \$25,000 and the other spouse had a net income of \$12,500, so their combined net income was \$37,500.

The taxpayers' Iowa child and dependent care credit was \$320, since they were entitled to an Iowa credit of 40 percent of their federal credit of \$800. The \$320 credit is allocated between the spouses on the basis of each spouse's Iowa net income as it relates to the combined Iowa net income of both spouses as shown below:

$$\begin{aligned}
 \$320 \times \frac{\$25,000}{\$37,500} &= \$213 && \text{child and dependent care credit for spouse} \\
 &&& \text{with \$25,000 Iowa net income} \\
 \\
 \$320 \times \frac{\$12,500}{\$37,500} &= \$107 && \text{child and dependent care credit for spouse} \\
 &&& \text{with \$12,500 Iowa net income}
 \end{aligned}$$

**304.15(3)** *Computation of the Iowa child and dependent care credit for nonresidents and part-year residents.* Nonresidents and part-year residents who have income from Iowa sources in the tax year may claim child and dependent care credits on their Iowa returns. The percentage of the federal credit allowed is determined based on the nonresident or part-year resident's all-source net income. If the nonresident or part-year resident's all-source net income is \$90,000 or higher, the taxpayer will not qualify for the Iowa child and dependent care credit regardless of the amount of the taxpayer's Iowa-source income. To compute the amount of child and dependent care credit that can be claimed on the Iowa return by a nonresident or part-year resident, the following formula shall be used:

Federal child and dependent care credit	×	Percentage of federal child and dependent credit allowed on Iowa return from table in subrule 42.15(1) based on all-source net income	×	<u>*Iowa net income</u>  All-source net income
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\*Iowa net income for purposes of determining the child care credit that can be claimed on the Iowa return by a nonresident or part-year resident taxpayer is the total Iowa-source income less the Iowa-source adjustments to income as computed on the Schedule IA 126.

In cases where married taxpayers are nonresidents or part-year residents of Iowa and are filing separate Iowa returns or are filing separately on the combined Iowa return form, the child and dependent

care credit allowable on the Iowa return should be allocated between the spouses in the ratio of the Iowa net income of each spouse to the combined Iowa net income of the taxpayers.

**304.15(4) Example of computation of the Iowa child and dependent care credit for nonresidents and part-year residents.** The following is an example of the computation of the Iowa child and dependent care credit for nonresidents and part-year residents.

A married couple lives in Omaha, Nebraska. One of the spouses worked in Iowa and had an Iowa-source net income of \$15,000. That spouse had an all-source net income of \$20,000. The second spouse had an Iowa-source net income of \$10,000 and an all-source net income of \$15,000. The couple had a combined Iowa-source net income of \$25,000 and a combined all-source net income of \$35,000. The taxpayers had a federal child and dependent care credit of \$800 which related to expenses incurred for the care of their two young children. The taxpayers' Iowa child and dependent care credit is calculated below:

Federal child and dependent care credit	Percentage of federal child and dependent credit allowed on Iowa return	Iowa-source net income	All-source net income
\$800	× 40% =	\$320	× $\frac{\$25,000}{\$35,000}$ = \$229

The \$229 credit is allocated between the spouses as shown below:

\$229 ×	$\frac{\$15,000}{\$25,000}$ =	\$137 for spouse with Iowa-source net income of \$15,000
\$229 ×	$\frac{\$10,000}{\$25,000}$ =	\$92 for spouse with Iowa-source net income of \$10,000

This rule is intended to implement Iowa Code section 422.12C.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0337C, IAB 9/19/12, effective 10/24/12; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 6149C, IAB 1/12/22, effective 2/16/22; Editorial change: IAC Supplement 11/2/22]

**701—304.16(422) Franchise tax credit.** For tax years beginning on or after January 1, 1997, a shareholder in a financial institution, as defined in Section 581 of the Internal Revenue Code, which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro rata share of the Iowa franchise tax paid by the financial institution.

For tax years beginning on or after July 1, 2004, a member of a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes which has elected to have its income taxed directly to its members may take a tax credit equal to the member's pro rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. For tax years beginning on or after January 1, 2007, only the credits allowed in Iowa Code section 422.12 are reduced in computing the franchise tax credit.

The resulting amount, not to exceed the shareholder's or member's pro rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder or member.

This rule is intended to implement Iowa Code section 422.11.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.17(15E) Eligible housing business tax credit.** An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—42.53(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 2014 Iowa Code section 15E.193B.

**304.17(1) Computation of credit.** New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, or hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

For tax years beginning prior to January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of 2014 Iowa Code section 15E.193B, the taxpayer, in order to be an eligible housing business, may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 2014 Iowa Code section 15E.193B. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.17(2). The tax credit certificate must be included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the economic development authority may be found under 261—Chapter 59.

**304.17(2) *Transfer of the eligible housing business tax credit.*** For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

**EXAMPLE 1:** A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling \$250,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The \$250,000 tax credit is going to be transferred to Bill Smith, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, Mr. Smith cannot file an amended Iowa individual income tax return for the 2013 tax year until January 1, 2016, to claim the \$250,000 tax credit.

**EXAMPLE 2:** A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling \$150,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The \$150,000 tax credit is going to be transferred to Greg Rogers, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, Mr. Rogers cannot file an amended Iowa individual income tax return for the 2014 tax year until January 1, 2016, to claim the \$150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the economic development authority, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the economic

development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credits shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2014 Iowa Code section 15E.193B.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.18(422) Assistive device tax credit.** Effective for tax years beginning on or after January 1, 2000, a taxpayer that is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer shall not deduct for Iowa income tax purposes any amount of the cost of an assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

**304.18(1) Submitting applications for the credit.** A small business that wishes to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate of entitlement for the assistive device credit shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved, the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer shall enter the date that the assistive device project was completed. The certificate of entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2007, and completed the assistive device workplace modification project on January 15, 2008, taxpayer A could claim the assistive device credit on taxpayer A's 2008 Iowa return, assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not included with the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership,

limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner shall include a copy of the certificate of entitlement and the statement of allocation of the assistive device credit with the individual's state income tax return.

**304.18(2) Definitions.** The following definitions are applicable to this rule:

*"Assistive device"* means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

*"Business entity"* means partnership, limited liability company, S corporation, estate, or trust, where the income of the business is taxed to each of the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

*"Disability"* means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.
5. Alcoholism.

*"Employee"* means an individual who is employed by the small business and who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business shall not be considered an employee of the small business for purposes of this rule.

*"Small business"* means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

*"Workplace modifications"* means physical alterations to the office, factory, or other work environment where the disabled employee is working or will work.

**304.18(3) Allocation of assistive tax credit to owners of a business entity.** If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an assistive device credit of \$2,500 for a tax year and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the partnership.

**304.18(4) Repeal of credit.** The assistive device credit is repealed on July 1, 2009.

This rule is intended to implement Iowa Code section 422.11E.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.19(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014.** A historic preservation and cultural and entertainment district tax credit, subject to the availability of the

credit, may be claimed against a taxpayer's Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa.

The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. 2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with tax credits reserved prior to July 1, 2014, are found in this rule. The department of revenue's provisions for projects with agreements entered into on or after July 1, 2014, are found in rule 701—42.54(404A,422). The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by rule 701—42.54(404A,422).

**304.19(1)** *Eligible properties for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing.
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.
- c. Property or district designated a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

**304.19(2)** *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered.

b. Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

**304.19(3)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by the state historic preservation office for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

a. In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of property other than commercial property, the qualified rehabilitation

costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less.

b. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project are qualified rehabilitation costs.

c. For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

EXAMPLE: The basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code.

**304.19(4)** *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must be issued a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate, which shall be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee, the amount of the tax credit being transferred, and any consideration received in exchange for the tax credit, as provided in subrule 42.19(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

The tax credit certificate shall be included with the income tax return for the period in which the project was completed.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**304.19(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity for tax credits reserved for fiscal years beginning on or after July 1, 2012.* For tax credits reserved for fiscal years beginning on or after July 1, 2012, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

**304.19(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than \$1,000 shall not be transferable.

*a.* For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. Within 90 days of the transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number and address, the denomination that each replacement tax credit certificate is to carry, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

*b.* The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c.* If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the tax credit shall be fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.11D.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1138C**, IAB 10/30/13, effective 12/4/13; **ARC 1968C**, IAB 4/15/15, effective 5/20/15; Editorial change: IAC Supplement 11/2/22]

**701—304.20(422) Ethanol blended gasoline tax credit.** Effective for tax years beginning on or after January 1, 2002, a retail gasoline dealer may claim an ethanol blended gasoline tax credit against that individual's individual income tax liability. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more

motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For taxpayers having a fiscal year ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

**EXAMPLE 1:** A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a \$250 credit available.

The credit may be calculated on Form IA 6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit may be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involves ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.31(422) for the same tax year for the same ethanol gallons.

**EXAMPLE 2:** A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this amount constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

**304.20(1) Definitions.** The following definitions are applicable to this rule:

*"Ethanol blended gasoline"* means the same as defined in Iowa Code section 214A.1.

*"Gasoline"* means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

*"Motor fuel pump"* means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

*"Retail dealer"* means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

*"Retail motor fuel site"* means a geographic location in Iowa where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

*"Sell"* means to sell on a retail basis.

**304.20(2) Allocation of credit to owners of a business entity.** If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity

on the basis of each owner's pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of \$3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of \$750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

**304.20(3) *Repeal of ethanol blended gasoline tax credit.*** The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 701—42.37(15,422) is available beginning January 1, 2009, for retail dealers of gasoline.

See 701—subrule 52.19(3) for an example illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.11C.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.21(15E) Eligible development business investment tax credit.** Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business which is not a development business and which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business which is not a development business can claim an investment tax credit only on additional new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.22(15E,422) Venture capital credits.**

**304.22(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.***

*a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity

investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

*b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015.* For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment. However, for investments made in qualifying businesses during the 2014 calendar year, the credit cannot be redeemed prior to January 1, 2016. For example, if an individual taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. However, if the taxpayer dies prior to redeeming the tax credit, the remaining tax credit may be redeemed on the decedent's final income tax return. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

*c. Equity investments in a qualifying business on or after July 2, 2015.* For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed \$2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000. The maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed \$100,000 combined. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code.

(3) Year in which the tax credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 42.22(1)"c"(2) above.

(5) Refundability. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division II, 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.

(6) Transfers and carryback of tax credits prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

**304.22(2)** *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**304.22(3)** *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the

individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**304.22(4) Innovation fund investment tax credit.** See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in the form of cash in an innovation fund for tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit equal to 25 percent of the taxpayer's equity investment in the form of cash in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall claim the tax credit for the tax year in which the investment is made. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. No tax credit certificates will be issued prior to September 1, 2014. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the investment was made as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2013 and the \$8 million cap for the fiscal year ending June 30, 2014, had already been reached, the tax credit will be issued for the tax year ending December 31, 2014, and can be redeemed for the tax year ending December 31, 2014.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

The innovation fund tax credit certificate may be transferred once to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the innovation fund tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based

on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.51, 15E.52, 15E.66, 422.11F, and 422.11G and section 15E.43 as amended by 2015 Iowa Acts, chapter 138.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9966B, IAB 1/11/12, effective 2/15/12; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 2632C, IAB 7/20/16, effective 8/24/16; Editorial change: IAC Supplement 11/2/22]

**701—304.23(15) New capital investment program tax credits.** Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid and can be claimed on tax returns filed after July 1, 2005.

**304.23(1) Research activities credit.** A business approved under the new capital investment program is eligible for an additional research activities credit as described in 701—subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 42.11(3).

**304.23(2) Investment tax credit.**

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph “b.” New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

*b. Tax credit percentage.* The amount of tax credit claimed shall be based on the number of high quality jobs created as determined by the Iowa department of economic development:

(1) If no high quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

*c. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 42.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

*d. Repayment of benefits.* If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code section 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and sections 15.335 and 15.381 to 15.387.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.24(15E,422) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For the 2012 calendar year and subsequent calendar years, the total amount of endow Iowa tax credits is \$6 million; the maximum amount of tax credit authorized to a single taxpayer is \$300,000 (\$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620, and section 422.11H.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1138C, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22]

**701—304.25(422) Soy-based cutting tool oil tax credit.** Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit:

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11I.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.26(15I,422) Wage-benefits tax credit.** Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

**304.26(1) Definitions.** The following definitions are applicable to this rule:

*"Average county wage"* means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

*"Benefits"* means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

*"Department"* means the Iowa department of revenue.

*"Full-time"* means the equivalent of employment of one person:

1. For 8 hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, 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.

*"Grow Iowa values fund"* means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

*"Nonqualified new job"* means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.

3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

“*Qualified new job*” or “*job creation*” means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business in Iowa within the previous 12 months.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

“*Retail business*” means a business which sells its product directly to a consumer.

“*Retained qualified new job*” or “*job retention*” means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

“*Service business*” means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside Iowa.

**304.26(2)** *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**304.26(3)** *Application for the tax credit; tax credit certificate; amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

- (1) Name, address and federal identification number of the business.
- (2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa shall be included.
- (3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.
- (4) A computation of the amount of credit being requested.
- (5) The address and state of residence of each new employee.
- (6) The date that the qualified new job was filled.
- (7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.
- (8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification numbers of the partners, shareholders, members or beneficiaries, along with their percentage of the pro rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

*b.* Upon receipt of the application, the department has 45 days either to approve or deny the application. If the department does not act on the application within 45 days, the application is deemed approved. If the department denies the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of denial.

*c.* If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate shall contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

*d.* The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million for the fiscal year ending June 30, 2007, and shall not exceed \$4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the \$4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the \$4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million or \$4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

*e.* A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the \$4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.26(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first \$4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

*f.* For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first \$4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of \$4 million are issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the \$4 million in wage-benefits tax credits filed applications totaling \$3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first \$3 million of the available \$4 million will be allowed to these same businesses. The remaining \$1 million that is still available for the fiscal year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining \$1 million in tax credits is issued.

*g.* A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

*h.* A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive

tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 or moneys from the grow Iowa values fund.

**304.26(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is \$11.86 per hour. If the average county wage per hour for Clayton County is \$11.95 for the fourth quarter of 2005, \$12.05 for the first quarter of 2006, and \$12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is \$12.00 per hour. This wage equates to an average annual wage of \$24,960 ( $\$12.00 \times 40 \text{ hours} \times 52 \text{ weeks}$ ). In order for Business D to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$32,448 (130 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order for Business D to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$39,936 (160 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is \$13.75 per hour in Grundy County, this wage equates to an average county wage of \$28,600. The wages and benefits for each of these three new employees is \$40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of \$2,000 for each employee ( $\$40,000 \times 5 \text{ percent}$ ), for a total wage-benefits tax credit of \$6,000. If Business E files on a calendar-year basis, the \$6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months in a job which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees,

since these employees have now been employed for 12 months. However, the credit may not be allowed if more than \$4 million of retained job tax credits have been issued for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than \$4 million of retained job tax credits have been issued for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

**304.26(5) *Repeal of the wage-benefits tax credit.*** The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 42.26(3), paragraphs “d,” “e,” and “f.” A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I and section 422.11L.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; Editorial change: IAC Supplement 11/2/22]

**701—304.27(422,476B) Wind energy production tax credit.** Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer’s Iowa individual income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

**304.27(1) *Application and review process for the wind energy production tax credit.*** An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, that is located in Iowa, and that is placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate generating capacity of no less than  $\frac{3}{4}$  of a megawatt.

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 50 megawatts. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

**304.27(2) *Computation of the credit.*** The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner

during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of “related person” uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation § 1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer’s name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.27(1).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner’s, member’s, shareholder’s or beneficiary’s pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder’s interest in the partnership, limited liability company or S corporation, or the beneficiary’s interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**304.27(3) *Transfer of the wind energy production tax credit certificate.*** The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee’s name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited

liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476B as amended by 2011 Iowa Acts, House File 672.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.28(422,476C) Renewable energy tax credit.** Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability.

**304.28(1) Eligible facility application process.**

*a. Eligible facility application process, generally.* A producer or purchaser of a renewable energy facility must be approved as an eligible renewable energy facility by the Iowa utilities board in order to qualify for the renewable energy tax credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2018. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

*b. Limitations on maximum energy production and nameplate generating capacity.* The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts. For tax years beginning prior to January 1, 2015, the maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 53 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. For tax years beginning on or after January 1, 2015, the maximum amount of energy production for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 63 megawatts of nameplate generating capacity and, annually, 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. Extensions can be renewed for succeeding 12-month periods if the facility applies for the extension prior to expiration of the current extension period. A producer of renewable energy, who is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility. However, for tax years beginning on or after January 1, 2015, an entity described in

Iowa Code section 476C.1(6) “b”(4) or (5) may have an ownership interest in up to four solar energy conversion facilities described in Iowa Code section 476C.3(4) “b”(3).

**304.28(2) Tax credit certificate procedure.**

*a. Tax credit application process.* A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1). The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that were generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year for which the credit is applied.

*b. Tax credit calculation.* The department shall calculate the amount of the credit for which the applicant is eligible in accordance with subrules 42.28(3) and 42.28(4) and shall issue a tax credit certificate for that amount or shall notify the applicant in writing of its refusal to do so.

*c. Tax credit certificate issuance.* The tax credit certificate will include the taxpayer’s name, address and federal identification number; the tax type for which the credit will be claimed; the amount of the credit; and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.28(5). Once a tax credit certificate is issued pursuant to Iowa Code chapter 476C, it shall not be terminated or rescinded.

*d. Taxpayers that are partnerships, limited liability companies, S corporations, or estates or trusts.* If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner’s, member’s, shareholder’s or beneficiary’s pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder’s interest in the partnership, limited liability company or S corporation or of the beneficiary’s interest in the estate or trust.

*e. Carryforward.* To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**304.28(3) Limitations.**

*a. Energy production.* Of the maximum amount of energy production capacity equivalent for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities:

(1) No single facility may be allocated more than ten megawatts of nameplate generating capacity or energy production capacity equivalent.

(2) For tax years beginning on or after January 1, 2015, ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be reserved for solar energy conversion facilities described in Iowa Code section 476C.3(4) “b”(3) that have a generating capacity of one and one-half megawatts or less.

(3) For tax years, beginning on or after January 1, 2014, 55 billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area.

(4) For tax years beginning on or after January 1, 2014, the maximum annual amount of energy production capacity for a single refuse conversion facility is 55 billion British thermal units of heat for a commercial purpose.

*b. Related persons.* The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

*c. Operation.* The facility must be operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.28(1).

*d. Prohibited for persons that have received a credit under Iowa Code chapter 476B.* A person that has received a wind energy production tax credit pursuant to Iowa Code chapter 476B may not be issued a renewable energy tax credit certificate.

*e. Ten-year award limitation.* The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

**304.28(4) Computation of the credit.** The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or \$1.44 per 1000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility or used for on-site consumption by the producer may exceed 12 months if the facility was operational for fewer than 12 months in its initial year of operation.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased or used for on-site consumption by the producer between April 1, 2006, and December 31, 2007.

**304.28(5) Transfer of the renewable energy tax credit certificate.**

*a. One-transfer limitation.* The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

*b. Transfer process—information required.* Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number; the amount of the tax credit being transferred; the value of any consideration provided by the transferee to the transferor; and any other information required by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

*c. Tax year.* The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit.

*d. Consideration.* Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**304.28(6) *Small wind innovation zones.*** Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

**304.28(7) *Appeals.*** If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing, and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476C as amended by 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 2772C**, IAB 10/12/16, effective 11/16/16; Editorial change: IAC Supplement 11/2/22]

**701—304.29(15) *High quality job creation program.*** Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—42.42(15) for information on the investment tax credit and additional research activities credit under the high quality jobs program. Any investment tax credit and additional research activities credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid and can be claimed on tax returns filed after July 1, 2009.

**304.29(1) *Research activities credit.*** An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in 701—subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate generating capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs “a” and “b.” The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

**304.29(2) *Investment tax credit.***

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development

261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned \$100,000 of investment tax credits for new investment made in 2006. The business can claim \$20,000 of investment tax credits for each of the years from 2006 through 2010. The \$20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the \$20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual’s pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

*b. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 42.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of

its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

*c. Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

- (1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- (2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- (3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- (4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- (5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**304.29(3) Determination of tax credit amounts.** The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

*a.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“*a*” for the amount of tax credits that may be claimed.

*b.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“*b*” for the amount of tax credits that may be claimed.

*c.* An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—42.26(15I,422).

This rule is intended to implement Iowa Code sections 15.326 to 15.337.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.30(15E,422) Economic development region revolving fund tax credit.** Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The tax credit is equal to 20 percent of a taxpayer's contribution

to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.232 and 422.11K as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 11/2/22]

**701—304.31(422) Early childhood development tax credit.** Taxpayers may claim a tax credit equal to 25 percent of the first \$1,000 of expenses paid to others for early childhood development for each dependent three to five years of age. The credit is available only to taxpayers whose net income is less than \$90,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit described in rule 701—42.15(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer's income tax liability.

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined net income of the taxpayers must be less than \$90,000 to be eligible for the credit. If the combined net income is less than \$90,000, the early childhood development tax credit shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined net income.

Nonresidents and part-year residents who have income from Iowa sources in the tax year may claim the early childhood development tax credit on their Iowa returns. If the taxpayer's all-source net income is \$90,000 or higher, the taxpayer will not qualify for the credit. Nonresidents or part-year residents of Iowa must determine the early childhood development tax credit in the ratio of their Iowa-source net income to their all-source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined Iowa return, the early childhood development tax credit must be allocated between the spouses in the ratio of each spouse's Iowa-source net income to their combined Iowa-source net income.

**304.31(1) Expenses eligible for the credit.** The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four, or five years of age:

*a.* Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

*b.* Books that improve child development, including textbooks, music books, art books, teacher editions, and reading books.

*c.* Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

*d.* Expenses paid for lesson plans and curricula.

e. Expenses paid for child development and educational activities outside the home. These activities include, but are not limited to, drama, art, music, and museum activities, including the entrance fees for such activities.

**304.31(2) Expenses not eligible for the credit.** The following expenses do not qualify for the early childhood development tax credit:

- a. Any expenses, including expenses paid to a preschool, once a dependent reaches the age of six.
- b. Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.
- c. Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

This rule is intended to implement Iowa Code section 422.12C.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 6149C, IAB 1/12/22, effective 2/16/22; Editorial change: IAC Supplement 11/2/22]

**701—304.32(422) School tuition organization tax credit.** For tax years beginning prior to January 1, 2021, a school tuition organization tax credit is available which is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2021, the tax credit is equal to 75 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit.

**304.32(1) Definitions.** The following definitions are applicable to this rule:

“*Certified enrollment*” means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

“*Contribution*” means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

“*Eligible student*” means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to four times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

“*Qualified school*” means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

“*School tuition organization*” means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. Allocates at least 90 percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents’ choice.
2. Awards tuition grants only to children who reside in Iowa.
3. Provides tuition grants to students without limiting availability to students of only one school.
4. Provides tuition grants only to eligible students.
5. Prepares an annual financial statement certified by a public accounting firm.

“*Tuition grant*” means a grant to a student to cover all or part of the student’s tuition at a qualified school.

**304.32(2) Initial registration.** In order for contributions to a school tuition organization to qualify for the credit, the school tuition organization must initially register with the department. The following information must be provided with this initial registration:

- a. Verification from the Internal Revenue Service that Section 501(c)(3) status was granted and that the school tuition organization is exempt from federal income tax.
- b. A list of all qualified schools that the school tuition organization serves.
- c. The names and addresses of all the members of the board of directors of the school tuition organization.

Once the school tuition organization is registered with the department, it is not required to subsequently register unless there is a change in the qualified schools that the organization serves. The school tuition organization must notify the department in writing of any changes in the qualified schools it serves.

**304.32(3) Participation forms.** Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

- a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.
- b. The name of the school tuition organization that represents the qualified school.

**304.32(4) Authorization to issue tax credit certificates.**

a. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following calendar year. The total amount of tax credit certificates that may be authorized is:

- (1) \$2.5 million for the 2006 calendar year,
- (2) \$5 million for the 2007 calendar year,
- (3) \$7.5 million for the 2008 through 2011 calendar years,
- (4) \$8.75 million for the 2012 and 2013 calendar years,
- (5) \$12 million for the 2014 through 2018 calendar years,
- (6) \$13 million for the 2019 calendar year,
- (7) \$15 million for the 2020 and 2021 calendar years, and
- (8) \$20 million for the 2022 calendar year and subsequent calendar years.

b. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE: For determining the authorized tax credits for the 2022 calendar year, if the certified enrollment of all qualified schools in Iowa, as provided to the department by November 1, 2021, was 40,000, the per-student tax credit would be \$500 ( $\$20 \text{ million} \div 40,000$ ). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue \$700,000 ( $\$500 \times 1,400$ ) of tax credit certificates for the 2022 calendar year. The department would notify this school tuition organization by December 1, 2021, of the authorization to issue \$700,000 of tax credit certificates for the 2022 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$933,333 ( $\$700,000 \div 75\%$ ) during the 2022 calendar year which would be eligible for the tax credit.

**304.32(5) Issuance of tax credit certificates.**

a. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, designed by the department, shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

b. A tax credit certificate may be issued to a partnership, limited liability company, S corporation, estate or trust. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust.

**304.32(6) Claiming the tax credit.** The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. The taxpayer shall not claim an itemized deduction for charitable contributions for Iowa income tax purposes for the amount of the contribution made to the school tuition organization.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa, including those who are claiming a tax credit of a partnership, limited liability company, S corporation, estate, or trust of which they are a member, must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

**304.32(7) Reporting requirements.** Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each calendar year, the following information:

a. The names and addresses of all the members of the board of directors of the school tuition organization, along with the name of the chairperson of the board.

b. The total number and dollar value of contributions received by the school tuition organization for the previous calendar year.

c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous calendar year.

d. A list of each taxpayer who received a tax credit certificate for the previous calendar year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous calendar year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. The total number of children utilizing tuition grants for the school year in progress as of January 12, along with the total dollar value of the tuition grants.

f. The name and address of each qualified school represented by the school tuition organization at which tuition grants are being utilized for the school year in progress.

g. The number of tuition grant students and the total dollar value of tuition grants being utilized for the school year in progress at each qualified school served by the school tuition organization.

This rule is intended to implement Iowa Code section 422.11S.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 5978C, IAB 10/20/21, effective 11/24/21; Editorial change: IAC Supplement 11/2/22]

**701—304.33(422) E-85 gasoline promotion tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135.

**304.33(1) Claiming the credit.**

a. *Amount of the credit.* The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007, and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar years 2012 through 2024	16 cents

*b. Claiming the credit with other credits.* A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—42.20(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2009, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

*c. Refundability.* Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*d. Transferability.* The credit may not be transferred to any other person.

*e. Example.* A taxpayer operated one retail motor fuel site in 2008 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2008. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2008 tax year.

**304.33(2) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

See 701—subrule 52.30(2) for examples illustrating how this subrule is applied.

**304.33(3) Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.** If a taxpayer claiming the E-85 ethanol promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11O as amended by 2016 Iowa Acts, Senate File 2309.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 3043C, IAB 4/26/17, effective 5/31/17; Editorial change: IAC Supplement 11/2/22]

**701—304.34(422) Biodiesel blended fuel tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel that meets the standards provided in Iowa Code section 214A.2. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

**304.34(1) Calculating the credit.**

*a. Gallonage requirement.*

(1) Tax years beginning on or after January 1, 2006, but prior to January 1, 2009. In order for a retail dealer to qualify for the biodiesel blended fuel tax credit for tax years beginning on or after January 1, 2006, but prior to January 1, 2009, of the total gallons of diesel fuel that the retail dealer sells

and dispenses during the tax year, 50 percent or more of those gallons must be biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel. The gallonage amounts for all motor fuel sites of a retail dealer are combined when calculating this gallonage requirement.

(2) Tax years beginning on or after January 1, 2009, but prior to January 1, 2012. For tax years beginning on or after January 1, 2009, but prior to January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel.

(3) Tax years beginning on or after January 1, 2012. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated. A retail dealer may qualify for the biodiesel blended fuel tax credit even if the number of gallons of biodiesel blended fuel sold is less than 50 percent of the total gallons of diesel fuel sold.

*b. Amount of credit.*

(1) Fuel sold on or after January 1, 2006, but prior to January 1, 2012. For biodiesel blended fuel sold on or after January 1, 2006, but prior to January 1, 2012, the tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year. Qualifying biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel.

(2) Fuel sold on or after January 1, 2012, but prior to January 1, 2013. For biodiesel blended fuel sold on or after January 1, 2012, but prior to January 1, 2013, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel plus four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In addition, the gallonage requirements described in paragraph 42.34(1) "a" do not apply to fuel sold on or after January 1, 2012.

(3) Fuel sold on or after January 1, 2013, but prior to January 1, 2018. For biodiesel blended fuel sold on or after January 1, 2013, but prior to January 1, 2018, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

(4) Fuel sold on or after January 1, 2018, but prior to January 1, 2025.

1. Amount of credit. For biodiesel blended fuel sold on or after January 1, 2018, but prior to January 1, 2025, the tax credit equals the sum of three and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel plus five and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 11 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

2. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to contain 11 percent by volume of biodiesel, a 1 percent tolerance applies in determining the credit amount for the blended product as described in 42.34(1) "b"(4) "2":

- If the amount of the biodiesel erroneously blended with petroleum-based diesel is at least 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

- If the amount of biodiesel blended with petroleum-based diesel is at least 5 percent but less than 10 percent of the total blended product by volume, the entire blended product qualifies for the credit

amount available for biodiesel blended fuel that has a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel.

- Numbered paragraph 42.34(1)“b”(4)“2” applies only if a retail dealer intends to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel. If a retail dealer does not intend to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel and the product sold and dispensed contains less than 11 percent biodiesel by volume, no error has occurred and the product does not qualify for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

*c. Refundability.* Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*d. Transferability.* The credit may not be transferred to any other person.

*e. Examples.*

EXAMPLE 1: A taxpayer operated four retail motor fuel sites during 2008 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling \$1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE 2: A taxpayer operated two retail motor fuel sites during 2008, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel, and the other site sold 10,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2008 tax year.

EXAMPLE 3: Same facts as in example 2, except the fuel sales occurred in 2009. The taxpayer can claim a biodiesel blended fuel tax credit totaling \$750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

EXAMPLE 4: Same facts as in example 2, except the fuel sales occurred in 2016, and all biodiesel blended fuel sold contains a minimum percentage of 5 percent by volume of biodiesel. The taxpayer can claim a biodiesel blended fuel tax credit totaling \$1,575, which is 35,000 gallons multiplied by four and one-half cents, since the 50 percent biodiesel blended fuel requirement has been eliminated.

**304.34(2) Fiscal year filers.** Taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2024.

See 701—subrule 52.31(2) for examples illustrating how this subrule is applied.

**304.34(3) Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.** If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11P as amended by 2016 Iowa Acts, Senate File 2309.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 3043C, IAB 4/26/17, effective 5/31/17; Editorial change: IAC Supplement 11/2/22]

**701—304.35(422) Soy-based transformer fluid tax credit.** Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

**304.35(1) Eligibility requirements for the tax credit.** All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

- a. The costs must be incurred after June 30, 2006, and before January 1, 2009.
- b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.
- c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.
- d. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based transformer fluid used in the transition.
- e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.
- f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

**304.35(2) Applying for the tax credit.** An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

- a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.
- b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.
- c. The name, address, and tax identification number of the electric utility.
- d. The type of tax for which the credit will be claimed, and the first year in which the credit will be claimed.
- e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

**304.35(3) Claiming the tax credit.** After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code section 422.11R.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0251C, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22]

**701—304.36(16,422) Agricultural assets transfer tax credit and custom farming contract tax credit.**

**304.36(1)** *Agricultural assets transfer tax credit.* For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax equal to 5 percent of the rental income received by the owner for cash rental agreements and 15 percent of the rental income received by the owner for commodity share agreements. Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$6 million. For fiscal years beginning on or after July 1, 2013, the amount of the tax credit certificates issued by the Iowa finance authority for the agricultural assets transfer tax credit program cannot exceed \$8 million and the amount of the credit issued to an individual taxpayer cannot exceed \$50,000. However, effective December 31, 2017, the amount of tax credits issued by the Iowa finance authority for the agricultural assets transfer tax credit shall revert back to \$6 million.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. However, for any agricultural assets transfer tax credits originally issued for tax years beginning on or after January 1, 2008, any credit in excess of the tax liability may be credited to the tax liability for the following ten years. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the Iowa finance authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the Iowa finance authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

**304.36(2) Custom farming contract tax credit.** Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa individual income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa finance authority for the custom farming contract tax credit program cannot exceed \$4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed \$50,000. However, effective December 31, 2017, the Iowa finance authority will no longer issue custom farming contract tax credits.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the Iowa finance authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the Iowa finance authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 422.11M; 2014 Iowa Acts, Senate File 2328, sections 60 and 61, as amended by 2014 Iowa Acts, House File 2454; and 2014 Iowa Acts, Senate File 2328, sections 120 and 122.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 1138C, IAB 10/30/13, effective 12/4/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

**701—304.37(15,422) Film qualified expenditure tax credit.** Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for individual income tax. The tax credit cannot exceed 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

**304.37(1) Qualified expenditures.** A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. For limitations on the amount of labor and personnel expenditures, see Iowa department of economic development 261—paragraph 36.7(2) “b.”
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available from the film office of IDED.

**304.37(2) *Claiming the tax credit.*** Upon completion of the registered project in Iowa, the taxpayer must submit, in a format approved by IDED prior to production, a listing of the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer’s name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner’s, member’s, shareholder’s or beneficiary’s pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

**304.37(3) *Transfer of the film qualified expenditure tax credit.*** The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee’s name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members,

shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**304.37(4) *Repeal of film qualified expenditure tax credit.*** The film qualified expenditure tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project 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.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.38(15,422) Film investment tax credit.** Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for individual income tax. The tax credit cannot exceed 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

**304.38(1) *Claiming the tax credit.*** Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—42.37(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 42.37(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested \$100,000 in a project but the qualified expenditures in Iowa only totaled \$270,000, each investor would receive a tax credit based on a \$90,000 investment amount.

**304.38(2) *Transfer of the film investment tax credit.*** The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a

partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**304.38(3) *Repeal of film investment tax credit.*** The film investment tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project 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. [ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.39(422) Ethanol promotion tax credit.** Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA 137.

**304.39(1) *Definitions.*** The following definitions are applicable to this rule:

*“Biodiesel gallonage”* means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

*“Biofuel distribution percentage”* means the sum of the retail dealer’s total ethanol gallonage plus the retail dealer’s total biodiesel gallonage expressed as a percentage of the retail dealer’s total gasoline gallonage.

*“Biofuel threshold percentage”* is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

Determination Period	More than 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
2009	10%	6%
2010	11%	6%
2011	12%	10%
2012	13%	11%
2013	14%	12%
2014	15%	13%
2015	17%	14%
2016	19%	15%
2017	21%	17%
2018	23%	19%
2019	25%	21%
2020	25%	25%

“*Biofuel threshold percentage disparity*” means the positive percentage difference between the retail dealer’s biofuel threshold percentage and the retail dealer’s biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

“*Determination period*” means any 12-month period beginning on January 1 and ending on December 31.

“*Ethanol gallonage*” means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

“*Gasoline gallonage*” means the total number of gallons of gasoline sold by the retail dealer during a determination period.

**304.39(2) Calculation of tax credit.**

a. The tax credit is calculated by multiplying the retail dealer’s total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer’s biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate per Gallon 2009-2010	Tax Credit Rate per Gallon 2011	Tax Credit Rate per Gallon 2012-2020
0%	6.5 cents	8 cents	8 cents
0.01% to 2.00%	4.5 cents	6 cents	6 cents
2.01% to 4.00%	2.5 cents	2.5 cents	4 cents
4.01% or more	0 cents	0 cents	0 cents

b. For use in calculating a retail dealer’s total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.33(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—42.46(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer’s retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer’s retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage

as defined in subrule 42.39(1) is based on more than 200,000 gallons or on 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

*f.* Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**304.39(3) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 42.39(2), paragraph "a." Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. A taxpayer whose tax year is not on a calendar-year basis and that did not claim the ethanol promotion tax credit on the previous return may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

**304.39(4) Allocation of tax credit to owners of a business entity.** If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

**304.39(5) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this percentage exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This calculation results in an ethanol promotion tax credit of 6.5 cents times 11,950, or \$776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or \$1,000.

**EXAMPLE 2.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons which consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold 60,000 gallons of diesel fuel at this site during 2010, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This calculation results in an ethanol promotion tax credit of 4.5 cents times 30,900, or \$1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

**EXAMPLE 3.** A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000

gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

Site A – 70,000 times 10% equals	7,000
Site B – 70,000 times 10% equals	7,000
Site C – 60,000 times 10% equals	6,000
Site C – 10,000 times 79% equals	7,900
Total	<u>27,900</u>

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit is computed separately for each motor fuel site, and the ethanol promotion credit equals \$1,813.50, as shown below:

Site A – 7,000 times 6.5 cents equals	\$455.00
Site B – 7,000 times 6.5 cents equals	\$455.00
Site C – 13,900 times 6.5 cents equals	\$903.50
Total	<u>\$1,813.50</u>

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of \$2,310 for the fiscal year ending March 31, 2011, as shown below:

30,000 times 6.5 cents equals	\$1,950
8,000 times 4.5 cents equals	360
Total	<u>\$2,310</u>

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of \$1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the

taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or \$1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less than 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of \$1,462, as shown below:

Site A – 7,000 times 2.5 cents equals	\$175
Site B – 7,000 times 2.5 cents equals	\$175
Site C – 13,900 times 8 cents equals	\$1,112
Total	\$1,462

This rule is intended to implement Iowa Code section 422.11N as amended by 2011 Iowa Acts, Senate File 531.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9821B, IAB 11/2/11, effective 12/7/11; Editorial change: IAC Supplement 11/2/22]

**701—304.40(422) Charitable conservation contribution tax credit.** Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for individual income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

**304.40(1) Definitions.** The following definitions are applicable to this rule:

“*Conservation purpose*” means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

“*Qualified organization*” means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

“*Qualified real property interest*” means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

**304.40(2) Computation of the credit.** The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is \$100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as an itemized deduction for charitable contributions for Iowa income tax purposes.

**304.40(3) Claiming the tax credit.** The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include a copy of federal Form 8283, Noncash Charitable Contributions, which

reflects the calculation of the fair market value of the real property interest, with the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be included with federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be included with the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

**304.40(4) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1:** A taxpayer conveys a real property interest with a fair market value of \$150,000 to a qualified organization during 2008. The tax credit is equal to \$75,000, or 50 percent of the \$150,000 fair market value of the real property. The taxpayer cannot claim the \$150,000 as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2008.

**EXAMPLE 2:** A taxpayer conveys a real property interest with a fair market value of \$500,000 to a qualified organization during 2009. The tax credit is limited to \$100,000, which equates to \$200,000 of the contribution being eligible for the tax credit. The remaining amount of \$300,000 (\$500,000 less \$200,000) can be claimed as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2009.

This rule is intended to implement Iowa Code section 422.11W.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.41(15,422) Redevelopment tax credit.** The economic development authority is authorized by the general assembly and the governor to oversee the implementation and administration of the redevelopment tax credit program. Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council and the economic development authority may claim a redevelopment tax credit once the taxpayer has been issued a tax credit certificate for the project by the economic development authority. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for the economic development authority's administration of this program, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**304.41(1) Eligibility for the credit.** The economic development authority is responsible for developing a system for registration and authorization of projects receiving redevelopment tax credits. For more information, see Iowa Administrative Code 261—Chapter 65.

**304.41(2) Amount of the credit.**

*a. Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed is \$1 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credit allowed cannot exceed \$5 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$500,000. For the fiscal year beginning July 1, 2012, the maximum amount of tax credits allowed cannot exceed \$10 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$1 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the economic development authority board but not in excess of the amount established pursuant to Iowa Code section 15.119.

*b. Maximum credit per project.* The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 42.41(2) "a."

*c. Percentage computation.* The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.

(2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

**304.41(3) Claiming the credit.**

*a. Certificate issuance.* Upon completion of the project, the economic development authority will issue a tax credit certificate to the taxpayer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.41(4). To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate.

*b. Pro rata share.* If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

*c. Carryforward.* Except as provided in paragraph 42.41(3)“d,” any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

*d. Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the conditions of economic development authority 261—paragraph 65.11(4)“b” are met.

**304.41(4) Transfer of the credit.** The redevelopment tax credit can be transferred to any person or entity. However, a certificate indicating that the credit is refundable is only transferrable to the extent permitted by economic development authority 261—paragraph 65.11(4)“b.”

*a. Submission of transferred tax credit certificate to the department—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit, and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.

*b. Issuance of replacement certificate by the department.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee.

*c. Claiming the transferred tax credit.* The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax

type than the original tax credit certificate. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

**304.41(5) Basis reduction of the redevelopment property.** The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 for which a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).

This rule is intended to implement Iowa Code sections 15.293A, 422.11V and 15.119.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1949C, IAB 4/1/15, effective 5/6/15; Editorial change: IAC Supplement 11/2/22]

**701—304.42(15) High quality jobs program.** Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

**304.42(1) Research activities credit.** An eligible business approved under the high quality jobs program is eligible for an additional research activities credit as described in 701—subrule 52.7(4) for awards issued by the Iowa department of economic development prior to July 1, 2010. The eligible business is eligible for the research activities credit as described in 701—subrule 52.7(6) for awards issued by the Iowa department of economic development on or after July 1, 2010.

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate generating capacity. The research activities credit related to renewable energy generation components under the high quality jobs program and the enterprise zone program shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and in 701—subrule 52.7(5) for businesses in enterprise zones, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs “a” and “b.”

**304.42(2) Investment tax credit.** An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7).

The determination of the new investment eligible for the investment tax credit, the eligibility of a refundable investment tax credit for value-added agricultural product or biotechnology-related projects and the repayment of investment tax credits for the high quality jobs program is the same as set forth in subrule 42.29(2) for the high quality job creation program.

**304.42(3) Repayment of benefits.** If an eligible business fails to maintain the requirements of the high quality jobs program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment

of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality jobs program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code chapter 15.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.43(16,422) Disaster recovery housing project tax credit.** For tax years beginning on or after January 1, 2011, but before January 1, 2015, a disaster recovery housing project tax credit is available for individual income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project, and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The tax credit is repealed effective January 1, 2015.

**304.43(1) Issuance of tax credit certificates.** Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any person or entity.

**304.43(2) Limitation of tax credits.** The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed \$3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

**304.43(3) Claiming the tax credit.** The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa individual income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: An individual whose tax year ends on December 31 incurs \$100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of \$75,000, and \$15,000 of credit can be claimed on each Iowa individual income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the individual for the period ending December 31, 2011, is \$10,000, the credit is limited to \$10,000, and the remaining \$5,000 credit cannot be used. If the tax liability for the individual for the period ending December 31, 2012, is \$25,000, the credit is limited to \$15,000, and the remaining \$5,000 credit from 2011 cannot be used to reduce the tax for 2012.

**304.43(4) Potential recapture of tax credits.** If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on an individual income tax return.

This rule is intended to implement Iowa Code sections 16.211, 16.212 and 422.11X as amended by 2014 Iowa Acts, Senate File 2328.

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**701—304.44(422) Deduction of credits.**

**304.44(1) Sequencing of credit deductions.** The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, 422.12N, and 422.110 shall be claimed in the following sequence:

- a. Personal exemption credit.
- b. Tuition and textbook credit.
- c. Volunteer fire fighter, volunteer emergency medical services personnel and reserve peace officer tax credit.
- d. Nonresident and part-year resident credit.
- e. Out-of-state tax credit.
- f. Franchise tax credit.
- g. S corporation apportionment credit.
- h. Alternative minimum tax credit (for tax years beginning during 2023 only).
- i. Historic preservation tax credit (when the taxpayer has elected that the credit be nonrefundable under Iowa Code section 404A.2(4)).
- j. School tuition organization tax credit.
- k. Innovation fund investment tax credit.
- l. Endow Iowa tax credit.
- m. Redevelopment tax credit.
- n. From farm to food donation tax credit.
- o. Workforce housing tax credit.
- p. Hoover presidential library tax credit.
- q. Enterprise zone investment tax credit.
- r. High quality jobs investment tax credit.
- s. Wind energy production tax credit.
- t. Renewable energy tax credit.
- u. New jobs tax credit.
- v. Beginning farmer tax credit.
- w. Agricultural assets transfer tax credit.
- x. Custom farming contract tax credit.
- y. Geothermal heat pump tax credit.
- z. Solar energy system tax credit.
- aa. Charitable conservation contribution tax credit.
- ab. Alternative minimum tax credit (for tax years beginning before January 1, 2023).
- ac. Historic preservation tax credit (when the taxpayer has elected that the credit be refundable under Iowa Code section 404A.2(4)).
- ad. High quality jobs third-party developer tax credit.
- ae. Research activities credit.
- af. Child and dependent care tax credit or early childhood development tax credit.
- ag. Motor fuel tax credit.
- ah. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
- ai. Qualifying business investment tax credit (also known as angel investor tax credit).
- aj. Adoption tax credit.

- ak.* E-85 gasoline promotion tax credit.
- al.* Biodiesel blended fuel tax credit.
- am.* E-15 plus gasoline promotion tax credit.
- an.* Earned income tax credit.
- ao.* Renewable chemical production tax credit.
- ap.* Estimated payments, payment with vouchers, composite tax credits, and withholding tax.

**304.44(2) Order of credits carried forward from a previous tax year.** A credit carried forward from a previous tax year shall be applied against computed tax before a credit earned under the same credit program in the current tax year. However, a credit carried forward from a previous tax year cannot be applied against computed tax before a credit earned under a different credit program in a later year that appears before it in the sequence in subrule 42.44(1). For example, a school tuition organization tax credit awarded in the current tax year must be applied against computed tax before a renewable energy tax credit carried forward from a previous tax year.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11E, 422.11F, 422.11H, 422.11I, 422.11J, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11R, 422.11S, 422.11V, 422.11W, 422.11Y, 422.11Z, 422.12, 422.12B, 422.12C and 422.110 and 2014 Iowa Acts, House Files 2448 and 2468.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 6030C, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22; ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—304.45(15) Aggregate tax credit limit for certain economic development programs.** Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed \$185 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2012, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2012, awards made under these economic development programs cannot exceed \$170 million. For fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2014, these programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. For fiscal years beginning on or after July 1, 2014, these programs include the assistive device tax credit program, the workforce housing tax incentives program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. The administrative rules for the aggregate tax credit limit for the economic development authority may be found at 261—Chapter 76.

This rule is intended to implement Iowa Code section 15.119 as amended by 2014 Iowa Acts, House File 2448.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—304.46(422) E-15 plus gasoline promotion tax credit.** Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. “E-15 plus gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 138.

**304.46(1) Calculating the credit.**

*a. Amount of credit.* The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2013	3 cents
Gallons sold from January 1 through May 31 and from September 16 through December 31 for the 2014-2024 calendar years	3 cents
Gallons sold from June 1 through September 15 for the 2014-2024 calendar years	10 cents

*b. Claiming the credit with other credits.* A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2011, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

*c. Refundability.* Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*d. Transferability.* The credit may not be transferred to any other person.

**304.46(2) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends prior to December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

**EXAMPLE 1:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

**EXAMPLE 2:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons multiplied by 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

**EXAMPLE 3:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2025. The taxpayer sold 20,000 total gallons of E-15 plus gasoline for the entire period from March 1, 2024, through February 28, 2025. For the period from March 1 through May 31, 2024, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$120 (4,000 gallons multiplied by 3 cents). For the period from June 1 through September 15, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$600 (6,000 gallons multiplied by 10 cents). For the period from September 16 through December 31, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$180 (6,000 gallons multiplied by 3 cents). For the period from January 1 through February 28, 2025, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which occurred after expiration of the credit. The taxpayer is entitled to claim a total E-15 plus gasoline promotion tax credit of \$900 (\$120 plus \$600 plus \$180) on the taxpayer's Iowa income tax return for the period ending February 28, 2025.

**304.46(3)** *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11Y as amended by 2016 Iowa Acts, Senate File 2309.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 3043C, IAB 4/26/17, effective 5/31/17; Editorial change: IAC Supplement 11/2/22]

**701—304.47(422) Geothermal heat pump tax credit.** For tax years beginning on or after January 1, 2019, but before January 1, 2024, a geothermal heat pump tax credit is available for residential property located in Iowa as provided in Iowa Code section 422.12N and this rule. Information relating to Iowa geothermal tax credits available for tax years prior to January 1, 2019, can be found in prior versions of this rule. Prior versions of the Iowa Administrative Code are located here: [www.legis.iowa.gov/law/administrativeRules/agencies](http://www.legis.iowa.gov/law/administrativeRules/agencies).

**304.47(1) Eligibility for the credit.** To be eligible for the credit described in this rule, all of the following requirements must be met:

a. The geothermal heat pump must be eligible for the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

b. The taxpayer must claim the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

c. The geothermal heat pump must be installed on residential property located in Iowa and placed in service on or after January 1, 2019, but before January 1, 2024. In determining whether this requirement is met, the term "placed in service" has the same meaning as used in Section 25D of the Internal Revenue Code.

d. The taxpayer must submit a timely and complete application to the department in accordance with subrule 304.47(4).

**304.47(2) Calculation of the credit.**

a. The credit is equal to 20 percent of the federal residential energy efficient property tax credit allowed for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code. Thus, the Iowa credit rate equals the following percentage of the qualified geothermal heat pump property expenditures:

(1) For property placed in service during calendar year 2019, 6 percent.

(2) For property placed in service during calendar year 2020 or 2021, 5.2 percent.

(3) For property placed in service during calendar year 2022 or 2023, 6 percent.

b. This credit expires on January 1, 2024.

**304.47(3) Tax credit award program limitations.** No more than \$1 million in geothermal heat pump tax credits will be issued per calendar year. If the annual tax credit allocation cap is not reached, the remaining amount below the cap shall be made available for the following tax year in addition to, and cumulated with, the cap for that year. The credit will not be available for installations on or after January 1, 2024, even if the previous year's cap was not met.

**304.47(4) How to apply for the credit—waitlist.**

a. *In general.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit shall be submitted through the tax credit submission system, which applicants may access through the department's website.

b. *Application deadline.* The application must be filed by May 1 of the year following the year of the installation of the geothermal heat pump.

c. *Contents of the application.* The application must contain the following information:

(1) Name, address, and federal identification number of the taxpayer.

- (2) Date of installation of the geothermal heat pump. This is the same as the date the installation was placed in service by the taxpayer.
- (3) Copies of invoices or other documents showing the cost of the geothermal heat pump.
- (4) Amount of federal income tax credit claimed for the geothermal heat pump.
- (5) Amount of Iowa tax credit requested.
- (6) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

*d. Waitlist.*

(1) If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist. Only valid applications filed by the taxpayer by May 1 of the year following the year the geothermal heat pump was installed shall be eligible for the waitlist.

(2) If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. Therefore, any geothermal heat pump tax credit request related to an installation completed prior to January 1, 2024, that does not receive a tax credit award by the time the 2023 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(3) Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to this rule in a future year is contingent upon the availability of tax credits in that particular year.

**304.47(5) Claiming the tax credit.**

*a. Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

*b. Claiming the tax credit.* The geothermal heat pump tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the geothermal heat pump tax credit federal Form 5695, Residential Energy Credits.

*c. Nonrefundable.* Any credit in excess of the taxpayer's tax liability is nonrefundable.

*d. Carryforward.* Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

*e. Nontransferable.* The tax credit may not be transferred to any other person.

This rule is intended to implement Iowa Code section 422.12N.

[ARC 5589C, IAB 4/21/21, effective 5/26/21; Editorial change: IAC Supplement 11/2/22; ARC 6903C, IAB 2/22/23, effective 3/29/23]

**701—304.48(422) Solar energy system tax credit.** A solar energy system tax credit is available for both residential property and business property located in Iowa as provided in Iowa Code section 422.11L and this rule.

**304.48(1) Relationship between the Iowa and federal credits.**

*a.* The Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also qualify for and claim the corresponding federal credit. Availability of the Iowa credit for a specific type of installation in a given year is dependent upon availability of the federal credit for that type of installation.

*b.* The Iowa credit conforms with the Internal Revenue Code as amended to and including January 1, 2016. The term "Internal Revenue Code" as used in this rule refers to the Internal Revenue Code as it existed on January 1, 2016. See Iowa Code section 422.11L(6); see also Public Law No. 114-113, Div. P, Title III, §§ 302, 303, 304, and Div. Q, Title I, § 187.

**304.48(2) Calculation of the credit—per installation award limitation.**

a. The credit is equal to the sum of the following federal tax credits for property located in Iowa:

(1) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code. This federal credit equals an applicable percentage of qualified solar energy electric property expenditures described in Section 25D(d)(2) of the Internal Revenue Code for residential use. This credit is not available for Iowa purposes for any qualified solar energy electric property placed in service after December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

(2) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code. This federal credit equals an applicable percentage of the qualified solar water heating property expenditures described in Section 25D(d)(1) of the Internal Revenue Code for residential use. This credit is not available for Iowa purposes for any qualified solar water heating property placed in service after December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

(3) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property equipment described in Section 48(a)(3)(A)(i) of the Internal Revenue Code that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purpose of heating a swimming pool), for business use. This credit is not available for Iowa purposes for any qualified property the construction of which begins on or after January 1, 2022, in accordance with Public Law No. 114-113 Div. P, Title III, § 303.

(4) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, for business use. This credit is not available for Iowa purposes for any qualified property placed in service after December 31, 2016, in accordance with Public Law No. 114-113 Div. Q, Title I, § 187.

Iowa Solar Energy System Tax Credit Rates for Installations On or After January 1, 2016,* Based on 50% of Applicable Federal Rate Under Sections 25D and 48 of the Internal Revenue Code in Effect on January 1, 2016			
Applicable Property	Calendar Year Construction Begins	Calendar Year Property Placed in Service	Iowa Tax Credit Rate
Qualified Residential Solar Electric Property Under Section 25D(a)(1) of the Internal Revenue Code	N/A	2016-2019	15%
	N/A	2020	13%
	N/A	2021	11%
	N/A	2022 or later	0%
Qualified Residential Solar Water Heating Property Under Section 25D(a)(2) of the Internal Revenue Code	N/A	2016-2019	15%
	N/A	2020	13%
	N/A	2021	11%
	N/A	2022 or later	0%
Qualified Business Energy Property (electric, heat/cool, solar process heat) Under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code	2016-2019	2016-2023	15%
		2024 or later	5%
	2020	2020-2023	13%
		2024 or later	5%
	2021	2021-2023	11%
		2024 or later	5%

	2022 or later	2022 or later	0%
Qualified Business Energy Property (fiber-optic solar illumination) Under Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code	N/A	2016	15%
	N/A	2017 or later	0%
*For a description of Iowa tax credit rates for installations placed in service prior to January 1, 2016, consult the prior versions of this rule.			

*b.* A solar installation must be placed in service to be eligible for the tax credit. In determining whether this requirement is met, the term “placed in service” has the same meaning as used for purposes of Section 25D or 48 of the Internal Revenue Code, as applicable. The date a taxpayer begins construction of a solar installation for purposes of Section 48 of the Internal Revenue Code shall be the same date the taxpayer begins construction for Iowa purposes.

*c.* The amount of tax credit claimed by a taxpayer related to subparagraphs 42.48(2) “a”(1) and 42.48(2) “a”(2) cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to subparagraphs 42.48(2) “a”(3) and 42.48(2) “a”(4) cannot exceed \$20,000 per separate and distinct installation. When a separate and distinct installation is used for both residential and business purposes, both award limitations apply and are calculated separately based on the proportion of the installation used for business purposes and for residential purposes. The taxpayer may use any reasonable method to establish the business and residential proportions, but the burden is on the taxpayer to prove the proper proportions. If the taxpayer does not provide adequate evidence to prove that the amounts of the business and residential proportions and the method for determining those proportions are reasonable, and if the department is unable to determine reasonable proportions from the information provided by the taxpayer, the entire installation shall be deemed used for residential purposes. The term “separate and distinct installation” is described in subrule 42.48(5).

EXAMPLE 1: Taxpayer A is a farmer who installs solar energy property during 2020 that provides power to two farm buildings and A’s residence. Taxpayer A submits one application for the Iowa solar energy system tax credit showing \$100,000 of total eligible expenditures. Taxpayer A provides evidence to the department that adequately explains A’s method of allocating the solar energy system’s total usage between business use and personal use, and shows that 40 percent of the solar energy property is used for residential purposes and 60 percent is used for farm business purposes. The department determines the amounts and the method for determining those proportions to be reasonable and therefore considers the taxpayer to have submitted a tax credit application requesting both a residential solar energy system tax credit and a business solar energy system tax credit. The residential tax credit request includes \$40,000 ( $\$100,000 \times 40\%$ ) of eligible expenditures, subject to the \$5,000 tax credit cap. Therefore, A is eligible for a residential tax credit of \$5,000 ( $\$40,000 \times 13\%$  Iowa credit rate = \$5,200, less \$200 in excess of cap). The business tax credit request includes \$60,000 ( $\$100,000 \times 60\%$ ) of eligible expenditures, subject to the \$20,000 tax credit cap. Therefore, A is eligible for a business tax credit of \$7,800 ( $\$60,000 \times 13\%$  Iowa credit rate). Taxpayer A receives a total Iowa tax credit of \$12,800 ( $\$5,000 + \$7,800$ ). Although A submitted one tax credit application in this situation, the resulting tax credit amount would have been the same if A had instead submitted two separate tax credit applications: one residential application with \$40,000 of eligible expenditures and one business application with \$60,000 of eligible expenditures.

EXAMPLE 2: Same facts as Example 1, except that taxpayer A does not submit adequate evidence to the department supporting a reasonable method of determining the proportion of the solar energy property used for residential and business purposes, and the department is unable to determine reasonable proportions from the information provided by A. The department deems the entire installation used for residential purposes, subject to the \$5,000 tax credit cap. Therefore, A receives a total Iowa tax credit of \$5,000 ( $\$100,000 \times 13\%$  Iowa credit rate = \$13,000, less \$8,000 in excess of cap).

*d.* Recomputation of federal credit.

(1) Because the Iowa credit is a percentage of the applicable federal credit, when the federal credit under Section 48 of the Internal Revenue Code is recomputed under 26 CFR §1.47-1, the Iowa credit

amount must also be recomputed and reduced by the same percentage that the federal credit was reduced. The federal credit recomputation is required on the federal Form 4255, Recapture of Investment Credit.

(2) In the year of the recomputation, if the amount of the Iowa credit previously claimed is less than the recomputed Iowa credit amount, the taxpayer must reduce any remaining available carryforward amount to reflect the Iowa credit carryforward remaining after the recomputation.

(3) If the amount of the Iowa credit previously claimed is more than the recomputed Iowa credit amount, the taxpayer must include the amount that was overclaimed in prior tax years as a negative credit amount on Form IA 148, Iowa Tax Credit Schedule, and any remaining unused credit carryforward amount expires immediately. The negative credit amount represents the overclaimed Iowa credit and will be netted against the taxpayer's other nonrefundable tax credits on Form IA 148, Iowa Tax Credit Schedule, if any. After applying the negative credit amount against other available nonrefundable credits, if the taxpayer's net total nonrefundable credits for the year is a negative amount, that negative amount must be entered on the appropriate line of the taxpayer's income tax return for reporting nonrefundable Iowa credits from Form IA 148, Iowa Tax Credit Schedule, and will increase the taxpayer's tax liability.

**304.48(3)** *Tax credit award program limitations.* The following program limitations apply:

*a. Aggregate tax credit award limit.* No more than \$5 million of tax credits per year will be issued for calendar years beginning on or after January 1, 2015. The annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax and in rule 701—58.22(422) for franchise tax.

*b. Allocation for residential installations.* Beginning with tax year 2014, at least \$1 million of the annual tax credit allocation cap for each tax year is reserved for residential installations qualifying under Section 25D of the Internal Revenue Code. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations qualifying under Section 48 of the Internal Revenue Code.

*c. Rollover of unallocated credits.* Beginning with calendar year 2014, if the annual tax credit allocation cap is not reached, the remaining amount below the cap shall be made available for the following tax year in addition to, and cumulated with, the cap for that year.

**304.48(4)** *How to apply for the credit.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit shall be submitted through the tax credit submission system, which applicants may access through the department's website.

*a. Application deadline.* For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

*b. Contents of the application.* The application must contain the following information:

- (1) Name, address, and federal identification number of the taxpayer.
- (2) Date of installation of the solar energy system. This is the same as the date the installation was placed in service by the taxpayer.
- (3) The kilowatt capacity of the solar energy system.
- (4) Copies of invoices or other documents showing the cost of the solar energy system.
- (5) Amount of federal income tax credit claimed for the solar energy system.
- (6) Amount of Iowa tax credit requested.

(7) All applicants must provide a completion sheet from a local utility company or similar documentation verifying that installation of the system has been completed. For nonresidential installations, the completion sheet must indicate the date the installation was placed in service. If a completion sheet from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) A copy of any signed agreement made regarding the solar energy system that verifies the applicant is a qualified applicant. This includes, but is not limited to, lease agreements. When an applicant is entitled to the Iowa solar energy system tax credit for a leased solar energy system, the other party to the lease will not be entitled to such a credit for the same leased solar energy system.

(9) For nonresidential installations, the date on which construction began.

(10) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

*c. Previously claimed expenditures disallowed.* An applicant may not include on an application any expenditure for which the taxpayer previously received, or was denied, a tax credit award or any expenditure that was part of an approved separate and distinct installation but was disallowed due to exceeding the maximum Iowa tax credit amount.

*d. Waitlist.* If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist. With the exception of the extension described in subparagraphs 42.48(4) "a"(1) and 42.48(4) "a"(2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. This tax credit limitation shall apply as follows:

(1) Residential property tax credit claims. The federal credits related to residential property under Sections 25D(a)(1) and 25D(a)(2) of the Internal Revenue Code expire and are unavailable for Iowa tax purposes for installations completed on or after January 1, 2022. Therefore, any residential tax credit request related to an installation completed prior to January 1, 2022, that does not receive a tax credit award by the time the 2021 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(2) Business property tax credit claims. The federal credit related to business property under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code does not expire for Iowa tax purposes. It is available for installations that begin construction prior to January 1, 2022, in any future tax year the installation is placed in service. Therefore, any business tax credit request related to an installation that begins construction prior to January 1, 2022, but that does not receive a tax credit award by the time the annual aggregate award limitation is met will not expire and will be eligible to be carried over on the waitlist to future years, and receive a tax credit award in a future year, provided the authorization to approve and issue tax credits under Iowa Code section 422.11L(4) "a" is not repealed.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to this rule in a future year is contingent upon the availability of tax credits in that particular year.

*e. Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

*f. Claiming the tax credit.* The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the solar energy system

tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

*g. Nonrefundable.* Any credit in excess of the taxpayer's tax liability is nonrefundable.

*h. Carryforward.* Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

*i. Nontransferable.* The credit may not be transferred to any other person.

**304.48(5) Separate and distinct installation requirement.** Only one tax credit may be awarded and claimed for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. For purposes of this subrule, unless the context otherwise requires, use of the term "installation" or "solar installation" refers to the physical equipment that generates electricity using solar energy in a manner that qualifies that equipment for a tax credit. In order for an installation that otherwise meets the requirements of Iowa Code section 422.11L and this rule to be considered a separate and distinct solar installation, both of the factors in paragraphs 42.48(5) "a" and "b" must be met. This determination is made by the department and requires a review of the current application received by the department and all prior applications received by the department from any taxpayer. When determining whether a solar installation is separate and distinct from other solar installations, the department will consider the totality of the facts and circumstances surrounding the solar installations. The taxpayer bears the burden of showing that an installation qualifies as separate and distinct. For a safe harbor rule relating to solar installations that begin construction prior to June 1, 2021, see paragraph 42.48(5) "c."

*a.* A repair or maintenance shall not constitute a solar installation. If the installed equipment repairs or otherwise maintains the working order of another solar installation or part of another solar installation, it will not be considered separate and distinct from that other solar installation, even if the installed equipment results in increased production capacity because of its superior quality, performance, or efficiency, or other similar reason. Evidence that part of the other solar installation was removed or replaced at or around the time the equipment was installed is a strong indication that the equipment is a repair or maintenance, but it is not required for such a determination.

EXAMPLE 3: Taxpayer B applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer B's workshop. Two years after that solar installation is placed in service, the solar inverter malfunctions. Taxpayer B purchases and installs a new solar inverter, which keeps the solar installation in working order. At the same time, B also replaces several functioning solar panels on the solar installation with new, higher quality panels that increase the solar installation's production capacity. Taxpayer B submits a second application for the costs of the solar inverter and the solar panels. These costs are considered a repair or maintenance and do not qualify as separate and distinct from the prior installation. Therefore, they do not qualify for the Iowa solar tax credit. This is the result even if the costs qualify for the federal tax credit and even though the solar panels improve the productivity of the solar installation.

*b.* The solar installation must be a replacement installation or an independent installation.

(1) Replacement installation. When previous solar installations have been completely decommissioned, whether from disposal by the applicant or casualty loss or theft, the new solar installation may be considered a replacement installation of the decommissioned solar installation. A solar installation that ceases operation but that has not been physically removed and discarded by a person is not decommissioned unless it cannot operate and is incapable of being repaired to working order. A solar installation that merely changes location or ownership has not been decommissioned and thus may not qualify as a replacement installation. Expenditures that are subject to an insurance reimbursement do not qualify for the solar energy system tax credit.

EXAMPLE 4: Taxpayer C applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer C's business. One year after that solar installation is placed in service, it is destroyed beyond repair by a severe storm. Taxpayer C's insurance policy does not cover damage to a solar installation. Taxpayer C purchases and places in service another solar installation that powers taxpayer C's business and timely applies for the Iowa solar energy system tax credit. Taxpayer C's subsequent installation may be eligible for the Iowa solar energy system installation credit as a replacement installation.

(2) Independent installation. An independent installation is one that has a sufficiently remote association with other solar installations that received the Iowa solar energy system tax credit such that it can be considered independent from those other solar installations. When determining whether a particular solar installation qualifies as an independent installation, the department will first consider the electrical generation purpose of the relevant solar installations, as described in numbered paragraph 42.48(5) “b”(2)“1” below. Only if the department finds that it cannot make a determination from that criteria alone will the department consider other criteria. A nonexhaustive list of other criteria that may be considered by the department is provided in numbered paragraph 42.48(5) “b”(2)“2” below.

1. Electrical generation purpose. The department will review the electrical generation purpose of each solar installation. As described below, this involves a review of the building(s) or structure(s) being powered by each solar installation. When two or more solar installations have the same electrical generation purpose, they are not independent installations. When two or more solar installations have different electrical generation purposes, this is an indication that they may be independent installations. With respect only to a multiple housing cooperative under Iowa Code chapter 499A or a horizontal property regime under Iowa Code chapter 499B, each apartment shall constitute a building or structure, and each cooperative or regime owner’s proportionate share of qualifying expenses incurred by the cooperative or regime shall constitute a solar installation paid by the cooperative or regime owner.

- Same building(s) or structure(s). If the applied-for solar installation will power buildings or structures that are also being powered by another solar installation, or that were being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, then the installations have the same electrical generation purpose. However, adequate proof from the taxpayer of a substantial increase in electricity demand is evidence tending to indicate that the solar installations do not have the same electrical generation purpose. A “substantial increase in electricity demand” exists when the sum of the average monthly electricity consumption of each building or structure powered by the applied-for solar installation for the 12-month period before the applied-for solar installation is placed in service is at least 50 percent greater than the sum of the average monthly electricity consumption of each building or structure powered by the other solar installation for the 12-month period before the other solar installation was placed in service. Average electricity consumption shall be measured in kilowatt hours. With respect to the other solar installation, if any applicable building or structure was not in service for a period of 12 months before the other solar installation was placed in service, the average monthly electricity consumption for that building or structure shall be the average electricity consumption for the first 12 months the building or structure was in service. With respect to the applied-for solar installation, the calculation of the average monthly electricity consumption for any building or structure that was not placed in service prior to the other solar installation shall be calculated using a denominator of 12 even if that building or structure was not in service for a period of 12 months before the applied-for solar installation was placed in service. The reason for the increased electricity consumption shall not be relevant in determining if a substantial increase in electricity demand exists.

EXAMPLE 5: Taxpayer D is awarded a solar energy system tax credit for a solar installation that provides power to D’s home. Three years later, D installs a second solar installation that also provides power to D’s home. Absent additional information from D that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first installation because they both provide power to D’s home. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 6: Taxpayer E owns an apartment building with ten apartment units. In 2021, taxpayer E installs solar energy business property with a cost of \$300,000 that will power the apartment building. Taxpayer E submits solar tax credit applications for ten different solar installations, one for each unit within the apartment building. Each application claims \$30,000 in qualifying costs and requests an Iowa solar credit of \$3,300 ( $\$30,000 \times 11\%$ ) for business property, for a sum total of \$33,000 in tax credits. Because the solar installations claimed on all ten applications provide power to the same apartment building, they all have the same electrical generation purpose. Therefore, only one of the solar installations could qualify for the tax credit as an independent installation, subject to the \$20,000

per-installation tax credit cap. The other nine installations would all fail to qualify as independent installations. The result is the same whether or not the apartment units have separate utility meters. See Example 10 for a different result if the building were organized as a multiple housing cooperative or horizontal property regime.

**EXAMPLE 7:** Taxpayer F, a machinist, is awarded a solar energy system tax credit for a solar installation that provides power to F's machine shop. Several years later, F installs a second solar installation that will provide power to F's machine shop but also to F's office building. Taxpayer F submits a complete and timely application for the solar energy system tax credit. Absent additional information from F that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first solar installation because they both provide power to F's machine shop. Therefore, the second solar installation would not be considered an independent installation.

**EXAMPLE 8:** Assume the same facts as Example 7, except that taxpayer F provides additional information to the department regarding the electricity consumption of F's machine shop and office building. Taxpayer F provides utility bills which show that for the 12-month period before the first solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,000 kilowatt hours. For the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,200 kilowatt hours. Additionally, the office building was constructed and placed in service three months before the second solar installation was placed in service. Taxpayer F provides utility bills which show that for the three months the office building was in service, the monthly electricity consumption for the office building was 1,400 kilowatt hours, 1,600 kilowatt hours, and 1,800 kilowatt hours, respectively. This means that the average monthly electricity consumption of the office building for purposes of the "substantial increase in energy demand" test is 400 kilowatt hours [i.e.,  $(1,400 + 1,600 + 1,800) \div 3 = 400$ ]. Therefore, for the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop and office building was 1,600 kilowatt hours [i.e.,  $1,200 + 400 = 1,600$ ]. Because this 1,600 monthly kilowatt hour average applicable to the second solar installation exceeds by at least 50 percent the 1,000 monthly kilowatt hour average applicable to the first solar installation, taxpayer F has shown a substantial increase in electricity demand and the second solar installation may qualify as an independent installation.

- Different building(s) or structure(s). If the applied-for solar installation will not power any building or structure that is also being powered by another solar installation, or that was also being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, this is an indication that the solar installations may have a different electrical generation purpose.

**EXAMPLE 9:** Taxpayer G, a farmer, is awarded a solar energy system tax credit for a solar installation that provides power to G's equipment barn. Later, G installs a second solar installation that will only provide power to G's livestock building. Because the first solar installation only provides power to G's barn and the second solar installation only provides power to G's livestock building, this is an indication that each solar installation has a different electrical generation purpose. The second solar installation would be considered an independent installation, unless additional information shows the contrary to be true.

**EXAMPLE 10:** Taxpayer H, a multiple housing cooperative under Iowa Code chapter 499A, owns an apartment building with ten apartment units. In 2021, H installs solar energy property with a cost of \$300,000 that will power the apartment building. The owner of each apartment unit submits a solar tax credit application for a solar installation claiming a proportionate share of H's qualifying expenditures for the solar energy property, which in this case is \$30,000 per owner, and requesting an Iowa credit of \$3,300 ( $\$30,000 \times 11\%$ ), for a sum total of \$33,000 in tax credits. Since this building is organized as a multiple housing cooperative under Iowa Code chapter 499A, each apartment constitutes a building or structure and each owner's proportionate share of qualifying expenses incurred by the cooperative constitutes a solar installation paid by the owner. This is the first solar installation with respect to each of these apartments, so they are not being powered by another solar installation that received an Iowa

tax credit. Therefore, this is an indication that each solar installation has a different electrical generation purpose. Each of the ten solar installations would be considered an independent installation, unless additional information shows the contrary to be true. The result would be the same if the building were organized as a horizontal property regime under Iowa Code chapter 499B. However, see Example 7 regarding apartment buildings not organized as a multiple housing cooperative or horizontal property regime.

2. Other criteria.

- **Location.** The department will consider the physical location of each solar installation. When two or more solar installations are in close physical proximity, this is an indication that the installations may not be independent installations. The farther in physical proximity the installations are, the stronger the likelihood that they are independent installations. Locating an installation at the same address or on the same or adjacent parcel as another installation is a stronger indication that the two installations are not independent installations than if they were located at different addresses or on nonadjacent parcels. The expansion in physical size or production capacity of an existing solar installation is an indication that the installations are not independent installations. If two or more solar installations are physically attached or connected to the same building or structure, this is an indication that the installations are not independent installations.

EXAMPLE 11: Taxpayer Q submits a complete and timely solar energy system tax credit application for a solar installation located at an address that is adjacent to the address of a prior solar installation for which taxpayer Q received a solar energy system tax credit award. Based on the information provided by the taxpayer, the department is unable to determine the electrical generation purpose of the solar installations. Without additional information, the proximity of the two solar installations supports a determination by the department that the second solar installation is not an independent installation.

- **Billing.** The department will consider the manner in which a utility company issues bills associated with solar installations. Even when a solar installation does not actually provide electricity to any buildings or structures that are also being powered by another solar installation, if a utility company issues bills associated with a solar installation under a net metering agreement in a manner that allows credits from the net outflow of one solar installation to be applied against the utility costs of buildings or structures that are powered by another solar installation, the department will evaluate the solar installations subject to the net metering agreement as if they were powering the same buildings or structures for purposes of determining electrical generation purpose in numbered paragraph 42.48(5) “b”(2)“1” above.

- **Utility metering.** The department will consider whether each solar installation is connected to a separate utility meter and the business reason, if any, for using separate utility meters. For purposes of this subrule, “utility meter” means a device installed by a utility company used to monitor the amount of electricity consumed or produced by a consumer. When a metering agreement requires a person to install two unidirectional meters, the set will be considered a single utility meter for purposes of this subrule. The department will not consider a measuring device installed and used by a person for personal monitoring of electricity production or consumption to be a “utility meter” for purposes of this subrule. This should not be interpreted to require a person to connect the person’s solar installation to a utility provider’s grid in order to be eligible for the tax credit.

- **Payment for installation or service.** The department will consider how expenses incurred for construction or servicing of a solar installation are paid. When expenses incurred for two or more solar installations are paid by related parties, it may indicate that the installations are not independent installations. However, the department may request additional information to evaluate the relationship between the person who pays for such expenses and the person who claims the tax credit.

- **Contract terms.** The department will consider the terms of installation and service contracts related to the solar installation and may require a person to provide installation and service contracts related to any prior solar installation for which the department has received a tax credit application. When contract terms indicate that the solar installations have been installed as or are serviced as a single, functional unit or system, the department will consider that as evidence that the installations are not independent installations.

- Timing of installation or application. The department will consider when the applied-for solar installation was placed in service and when a person submits the tax credit application as compared to other solar installations.

c. Safe harbor for solar installations that begin construction prior to June 1, 2021. For any solar installation for which the taxpayer begins construction prior to June 1, 2021, the taxpayer may rely on the factors in the prior version of paragraph 42.48(7)“a” in determining whether the solar installation is a separate and distinct installation. Prior versions of the Iowa Administrative Code are located here: [www.legis.iowa.gov/law/administrativeRules/agencies](http://www.legis.iowa.gov/law/administrativeRules/agencies).

**304.48(6)** *Unavailable to those eligible for renewable energy tax credit.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422,476C) is not eligible for the solar energy system tax credit.

**304.48(7)** *Allocation of tax credit to owners of a business entity or beneficiaries of an estate or trust.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, estate, or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate, or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014.

This rule is intended to implement Iowa Code section 422.11L.  
[ARC 0361C, IAB 10/3/12, effective 11/7/12; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 1666C, IAB 10/15/14, effective 11/19/14; ARC 2925C, IAB 2/1/17, effective 3/8/17; ARC 5590C, IAB 4/21/21, effective 5/26/21; Editorial change: IAC Supplement 11/2/22]

**701—304.49(422) Volunteer fire fighter, volunteer emergency medical services personnel member, and reserve peace officer tax credit.** Effective for tax years beginning on or after January 1, 2014, a tax credit is available for individual income tax for volunteer fire fighters, volunteer emergency medical services (EMS) personnel members, and reserve peace officers.

**304.49(1)** *Definitions.* The following definitions are applicable to this rule:

“*Emergency medical services personnel member*” or “*EMS personnel member*” means an emergency medical care provider, as defined in Iowa Code section 147A.1, who is certified as a first responder in accordance with Iowa Code chapter 147A. For tax years beginning on or after January 1, 2014, “emergency medical services personnel member” or “EMS personnel member” also includes an individual who is a paid employee of an emergency medical services program and who is also a volunteer emergency medical services personnel member in a city, county, or area governed by an agreement pursuant to Iowa Code chapter 28E.

“*Reserve peace officer*” means a reserve peace officer as defined in Iowa Code section 80D.1A who has met the minimum state training standards established by the Iowa law enforcement academy in accordance with Iowa Code chapter 80D.

“*Volunteer fire fighter*” means a volunteer fire fighter, as defined in Iowa Code section 85.61, who has met the minimum training standards established by the fire service training bureau pursuant to Iowa Code chapter 100B. For tax years beginning on or after January 1, 2014, “volunteer fire fighter” means an individual who is an active member of an organized volunteer fire department in Iowa or is performing services as a volunteer fire fighter for a municipality, township, or benefited fire district at the request of the chief or other person in command and who has met the minimum training standards established by the fire service training bureau pursuant to Iowa Code chapter 100B. For tax years beginning on or after January 1, 2014, a volunteer fire fighter also includes an individual who is a paid employee of a fire department and who is also a volunteer fire fighter in a city, county, or area governed by an agreement pursuant to Iowa Code chapter 28E.

**304.49(2)** *Calculation of the credit.*

a. The credit is equal to \$250 for tax years beginning on or after January 1, 2021, if the volunteer fire fighter, volunteer EMS personnel member, or reserve peace officer was a volunteer for the entire year. The credit is equal to \$50 for tax year 2013 and \$100 for tax years 2014 through 2020.

b. If the individual was not a volunteer fire fighter, volunteer EMS personnel member, or reserve peace officer for the entire calendar year, the credit is prorated based on the number of months the individual was a volunteer. If the individual was a volunteer during any part of a month, the individual will be considered a volunteer for the entire month. The amount of credit will be rounded to the nearest dollar.

EXAMPLE: An individual became a volunteer fire fighter on April 15, 2021, and remained a volunteer for the rest of calendar year 2021. The individual is considered a volunteer for nine months of 2021. The tax credit for 2021 is equal to \$188 (\$250 multiplied by 9/12 equals \$187.50; rounding to the nearest dollar results in a \$188 credit).

c. If an individual holds more than one volunteer position as a volunteer fire fighter, a volunteer EMS personnel member, or a reserve peace officer during the same month, a credit can be claimed for only one volunteer position for that month. For example, if an individual was both a volunteer fire fighter and volunteer EMS personnel member for all of calendar year 2021, the tax credit will equal \$250.

**304.49(3) Verification of eligibility for the tax credit.** An individual is required to have a written statement from the fire chief or other appropriate supervisor verifying that the individual was a volunteer fire fighter or volunteer EMS personnel member for the months for which the tax credit is being claimed. An individual who is a reserve peace officer must have a written statement from the chief of police, sheriff, commissioner of public safety, or other appropriate supervisor verifying that the individual was a reserve peace officer for the months for which the tax credit is being claimed. The written statement does not have to be attached to a tax return claiming the credit. However, the department may request that the individual provide the written statement.

This rule is intended to implement Iowa Code section 422.12.

[ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 6227C, IAB 3/9/22, effective 4/13/22; Editorial change: IAC Supplement 11/2/22]

**701—304.50(422) Taxpayers trust fund tax credit.** For tax years beginning on or after January 1, 2013, a taxpayers trust fund tax credit is available for Iowa individual income tax. The credit is available for all individual income tax filers, including residents, nonresidents and part-year residents of Iowa, and individuals who file as part of a composite return as described in rule 701—48.1(422), as long as the Iowa return is filed within the extended due date to file an Iowa return. Therefore, a fiscal-year filer whose tax year does not begin on January 1 is eligible to claim the taxpayers trust fund tax credit as long as the return is filed within the extended due date of the Iowa return.

**304.50(1) Calculation of the amount of tax credit.** The credit is calculated by taking the amount in the Iowa taxpayers trust fund and dividing it by the number of individual income taxpayers who filed Iowa returns by October 31 of the year preceding the year in which the credit is allowed.

EXAMPLE: There is \$120 million in the Iowa taxpayers trust fund at the end of the fiscal year ending June 30, 2013. There were 2,200,000 individuals who filed Iowa income tax returns by October 31, 2013, for tax years beginning on or after January 1, 2012, but beginning before January 1, 2013. This results in an Iowa taxpayers trust fund tax credit of \$54 for the tax year beginning on or after January 1, 2013, but beginning before January 1, 2014 (\$120,000,000 divided by 2,200,000 equals \$54.55, which is rounded down to the nearest whole dollar). All taxpayers who file their Iowa individual income tax return by October 31, 2014, for the tax period beginning on or after January 1, 2013, but beginning before January 1, 2014, will be entitled to claim a \$54 Iowa taxpayers trust fund tax credit.

If the amount of Iowa taxpayers trust fund tax credits claimed on tax returns for a particular year is less than the amount authorized, the difference will be transferred to the Iowa taxpayers trust fund for the next year and will be available as an Iowa taxpayers trust fund tax credit for the next year. There must be a balance in the Iowa taxpayers trust fund of at least \$30 million in order for the Iowa taxpayers trust fund tax credit to be available.

EXAMPLE: There is \$120 million in the Iowa taxpayers trust fund at the end of the fiscal year ending June 30, 2013. The total amount of Iowa taxpayers trust fund tax credit claimed on Iowa tax returns for tax years beginning on or after January 1, 2013, but beginning before January 1, 2014, which were filed on or before October 31, 2014, is \$90 million. The difference of \$30 million will be transferred to the Iowa taxpayers trust fund for the fiscal year ending June 30, 2014. The legislature approves an additional \$60 million to be deposited in the Iowa taxpayers trust fund for the fiscal year ending June 30, 2014. This will result in \$90 million in the Iowa taxpayers trust fund for the fiscal year ending June 30, 2014. If 2,200,000 individuals file Iowa individual income tax returns for tax years beginning on or after January 1, 2013, but beginning before January 1, 2014, by October 31, 2014, this will result in a \$40 Iowa taxpayers trust fund tax credit for the tax year beginning on or after January 1, 2014, but beginning before January 1, 2015 (\$90,000,000 divided by 2,200,000 equals \$40.90, which is rounded down to the nearest whole dollar).

**304.50(2)** *Claiming the credit on the tax return.* The Iowa taxpayers trust fund is claimed on the amount of Iowa tax computed after all other nonrefundable credits allowed in division II of Iowa Code chapter 422 (excluding the Iowa taxpayers trust fund tax credit) are deducted, after the amount of school district surtax described in rule 701—42.1(257,422) and emergency medical services income surtax described in rule 701—42.2(422D) is added, and after all refundable credits (excluding estimated payments and tax withheld) allowed in division II of Iowa Code chapter 422 are deducted. Any Iowa taxpayers trust fund tax credit in excess of the tax liability is not refundable and shall not be carried back to the tax year prior to the tax year in which the credit is claimed and cannot be carried forward to a tax year for any following year.

EXAMPLE: A taxpayer reported a tax liability of \$100 on the taxpayer's 2013 Iowa income tax return. The taxpayer claimed a \$40 personal exemption credit and a \$25 franchise tax credit. This resulted in tax due of \$35 before applying the school district surtax. Taxpayer was subject to a \$2 school district surtax which resulted in total tax due of \$37. Taxpayer was entitled to claim a \$54 Iowa taxpayers trust fund tax credit, but only \$37 of credit could be applied on the 2013 Iowa return. The remaining \$17 of credit cannot be refunded, cannot be applied to a prior year tax liability, and cannot be carried forward to be applied to a subsequent year tax liability.

This rule is intended to implement Iowa Code section 422.11E.  
[ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

**701—304.51(422) From farm to food donation tax credit.** A taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa individual income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or \$5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

**304.51(1)** To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

**304.51(2)** To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of "emergency feeding organization," "food bank," or "food pantry" as defined by the department of human services in 441—66.1(234). A food bank or emergency feeding organization that seeks recognition by the department shall register with the department in the form and manner prescribed by the department. The department will maintain a list of recognized organizations on the department's website.

**304.51(3)** Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the calendar year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer's claim is not provided by the organization, the taxpayer's claim will be denied.

**304.51(4)** To claim the credit for tax years beginning before January 1, 2022, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

**304.51(5)** To claim the credit for tax years beginning on or after January 1, 2022, a taxpayer shall complete the required tax credit form provided by the department and shall submit the form with the taxpayer's income tax return for the tax year the taxpayer made the qualifying donations. The required tax credit form shall be available on the department's website.

**304.51(6)** Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person.

**304.51(7)** If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code chapter 190B, subchapter I, and section 422.11R. [ARC 1138C, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22; ARC 6901C, IAB 2/22/23, effective 3/29/23]

**701—304.52(422) Adoption tax credit.** Effective for tax years beginning on or after January 1, 2014, an adoption tax credit is available for individual income tax equal to the amount of qualified adoption expenses paid or incurred by a taxpayer related to the adoption of a child. For an adoption finalized on or after January 1, 2014, but before January 1, 2017, the total adoption tax credit claimed for the adoption may not exceed \$2,500. For an adoption finalized on or after January 1, 2017, the total adoption tax credit claimed for the adoption may not exceed \$5,000.

**304.52(1) Adoption.** For purposes of the credit, an adoption occurs when a child is permanently placed in Iowa by any of the following:

- a. The department of human services;
- b. An adoption service provider as defined in Iowa Code section 600A.2; or
- c. An agency that meets the provisions of the interstate compact in Iowa Code section 232.158.

**304.52(2) Child.** A "child" is an individual who is under the age of 18 years. "Child" does not include any individual who is 18 years of age or older.

**304.52(3) Qualified adoption expenses.**

a. *Generally.* "Qualified adoption expenses" means unreimbursed expenses paid or incurred in connection with the adoption of a child. Qualified adoption expenses include all fees and costs related to the adoption of a child, such as:

- (1) Medical and hospital expenses of the biological mother that are incident to the child's birth;
- (2) Welfare agency fees and other reasonable and necessary adoption fees;
- (3) Court costs, attorney fees, and other legal fees;
- (4) Travel expenses, including amounts spent for meals and lodging while away from home; and

(5) All other fees and costs related to the adoption of a child.

*b. Limitations.* Expenses that are eligible for the federal adoption credit as provided in Section 23(d)(1) of the Internal Revenue Code will be considered qualified adoption expenses. Expenses paid or incurred in violation of state or federal law are not qualified adoption expenses. Expenses that have been reimbursed are not qualified adoption expenses.

**304.52(4) Claiming the credit.**

*a. Amount eligible for credit.* For tax years beginning on or after January 1, 2014, but beginning before January 1, 2017, the first \$2,500 of qualified adoption expenses is eligible for the credit. For tax years beginning on or after January 1, 2017, the first \$5,000 of qualified adoption expenses is eligible for the credit. The maximum credit amount is determined at the time the adoption becomes final. If the qualified adoption expenses are less than the maximum credit amount, then the total amount of qualified expenses can be claimed as a credit. The amount of tax credit claimed cannot be used as an itemized deduction for adoption expenses provided in 701—subrule 41.5(3).

*b. Claiming the credit in tax years beginning on or after January 1, 2014, but before January 1, 2019.*

(1) Claiming the credit in the year the adoption becomes final. For tax years beginning on or after January 1, 2014, but before January 1, 2019, to claim an adoption tax credit, a taxpayer must claim the credit for all qualified adoption expenses paid or incurred in the tax year the adoption becomes final, up to the maximum credit amount provided in paragraph 42.52(4)“a.”

EXAMPLE: Michael and Lori are married. Michael and Lori adopt a child who is permanently placed in Iowa. The adoption process begins and becomes final in 2015. Because the adoption becomes final on or after January 1, 2014, but prior to January 1, 2017, Michael and Lori qualify for a maximum credit amount of \$2,500. Michael and Lori incur and pay unreimbursed qualified adoption expenses of \$20,000 in 2015. Michael and Lori jointly file their Iowa individual income tax return in 2015. Michael and Lori may claim an Iowa adoption tax credit of \$2,500 in 2015.

(2) Claiming the credit in years other than the year the adoption becomes final. For tax years beginning on or after January 1, 2014, but before January 1, 2019, if a taxpayer cannot claim the maximum credit amount provided in paragraph 42.52(4)“a” for the year the adoption becomes final, the taxpayer may amend a prior year’s return to claim any remaining credit for expenses paid in that prior year, or the taxpayer may claim any remaining credit on a subsequent year’s return for expenses paid in that subsequent year. If a qualified adoption expense was incurred in one tax year and paid in another tax year, the taxpayer may only claim a credit for that expense in one year. The total adoption tax credit claimed for all years combined may not exceed the maximum credit amount per adoption provided in paragraph 42.52(4)“a.” An adjustment to a prior’s year return is subject to the limitations in rule 701—40.20(422).

EXAMPLE: Erin adopts a child as a single parent. The child is permanently placed in Iowa. The adoption process begins in 2016 and becomes final in 2017. Because the adoption becomes final on or after January 1, 2017, Erin qualifies for a maximum credit amount of \$5,000. Erin pays and incurs unreimbursed qualified adoption expenses of \$20,000 in 2016 and \$1,000 in 2017. In tax year 2017, Erin may claim an Iowa adoption tax credit equal to the \$1,000 in unreimbursed qualified adoption expenses paid and incurred in 2017. After claiming the credit for tax year 2017, Erin may amend the 2016 return to claim the remaining \$4,000 credit for unreimbursed qualified adoption expenses paid and incurred in 2016.

*c. Claiming the credit in tax years beginning on or after January 1, 2019.*

(1) Claiming the credit in the year the adoption becomes final. For tax years beginning on or after January 1, 2019, to claim an adoption tax credit, a taxpayer must claim the credit in the tax year the adoption is finalized for all qualified adoption expenses paid or incurred prior to or in the tax year the adoption becomes final, up to the maximum credit amount of \$5,000. A taxpayer shall not amend a prior year return in an attempt to claim the credit for unreimbursed qualified adoption expenses paid or incurred prior to the tax year in which the adoption becomes final.

EXAMPLE: Y and Z are married. Y and Z adopt a child who is permanently placed in Iowa. The adoption process begins in 2016 and becomes final in 2019. Because the adoption becomes final on or

after January 1, 2017, Y and Z qualify for a maximum credit amount of \$5,000. Additionally, because the adoption becomes final on or after January 1, 2019, Y and Z may claim an Iowa adoption tax credit for unreimbursed qualified adoption expenses paid or incurred prior to or in the year the adoption becomes final. Y and Z incur and pay unreimbursed qualified adoption expenses of \$5,000 in 2016, \$10,000 in 2017, \$2,000 in 2018, and \$2,000 in 2019. Y and Z jointly file their Iowa individual income tax return in 2019. Y and Z may claim an Iowa adoption tax credit of \$5,000 on their 2019 Iowa income tax return. Y and Z are not allowed to amend a prior year return in an attempt to claim the credit for unreimbursed qualified adoption expenses paid or incurred prior to the tax year in which the adoption became final.

(2) Claiming the credit in years after the adoption becomes final. For tax years beginning on or after January 1, 2019, if a taxpayer cannot claim the maximum credit amount of \$5,000 for the year the adoption becomes final, the taxpayer may claim an adoption tax credit for any unreimbursed qualified adoption expenses paid or incurred after the tax year in which the adoption becomes final in the tax year in which unreimbursed qualified adoption expenses are paid or incurred.

EXAMPLE: W and X are married. W and X adopt a child who is permanently placed in Iowa. The adoption process begins in 2018 and becomes final in 2019. Because the adoption becomes final on or after January 1, 2017, W and X qualify for a maximum credit amount of \$5,000. W and X incur and pay unreimbursed qualified adoption expenses of \$1,000 in 2018, and \$1,000 in 2019. W and X jointly file their Iowa individual income tax return in 2019. W and X may claim the Iowa adoption tax credit in 2019 in the amount of \$2,000. In 2020, W and X incur and pay \$5,000 in unreimbursed qualified adoption expenses in connection to the adoption finalized in 2019. W and X may claim the remaining \$3,000 credit on their jointly filed Iowa individual income tax return for 2020 for unreimbursed qualified adoption expenses incurred and paid in 2020. W and X shall not amend their 2019 return to reflect the additional unreimbursed qualified adoption expenses from 2020.

*d. Claiming the credit by two adoptive parents.* The adoption tax credit may only be claimed by a person who adopted the child. When a married couple adopts a child together and the couple files jointly on the same return, the credit may only be claimed once between the couple. When any other two persons adopt a child together, including married persons filing separately on the same or different returns or any unmarried persons filing on separate returns, the credit must be divided between the adoptive parents. Two adoptive parents, other than persons who are married filing jointly, may agree to divide the credit in any way. The total adoption tax credit claimed for all years by both parents combined may not exceed the maximum credit amount per adoption provided in paragraph 42.52(4) "a."

EXAMPLE: Peyton and Kerry are unmarried individuals. Peyton and Kerry adopt a child together. The child is permanently placed in Iowa. The adoption process begins and ends in 2018. Because the adoption becomes final on or after January 1, 2017, Peyton and Kerry qualify for a maximum credit amount of \$5,000. However, Peyton and Kerry pay and incur unreimbursed qualified adoption expenses of only \$3,000 in 2018. Accordingly, Peyton and Kerry may claim an Iowa adoption tax credit of \$3,000 in 2018, which must be divided between them. Peyton and Kerry agree that Peyton will claim \$2,000 of the credit, and Kerry will claim \$1,000 of the credit.

*e. Adoption of a special needs child.* If a taxpayer adopts a special needs child, the credit under this rule cannot exceed the amount of qualified adoption expenses paid or incurred by the taxpayer during the tax year. The amount of the federal adoption tax credit claimed for the adoption of a special needs child does not affect the amount of the credit under this rule.

EXAMPLE: Francis and Mandy are married. Francis and Mandy adopt a special needs child who is permanently placed in Iowa. The adoption process begins and ends in 2017. Francis and Mandy paid and incurred \$2,000 in unreimbursed qualified adoption expenses related to the adoption during 2017. For federal purposes, Francis and Mandy qualify for a maximum adoption tax credit of \$13,570 for the adoption of a special needs child. For Iowa purposes, Francis and Mandy qualify for a maximum adoption tax credit of \$2,000, which is equal to the amount of unreimbursed qualified adoption expenses they paid or incurred related to the adoption during the tax year.

*f. Adoption tax credit in excess of tax liability.* Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code section 422.12A as amended by 2016 Iowa Acts, House File 2468; 2017 Iowa Acts, Senate File 433; and 2019 Iowa Acts, House File 779. [ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 3749C, IAB 4/11/18, effective 5/16/18; ARC 5308C, IAB 12/2/20, effective 1/6/21; Editorial change: IAC Supplement 11/2/22]

**701—304.53(15) Workforce housing tax incentives program.** A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for individual income tax. The workforce housing tax incentives program replaced the eligible housing business enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48. The general assembly has mandated that the economic development authority and the department of revenue adopt rules to jointly administer Iowa Code sections 15.351 to 15.356. In general, the economic development authority is responsible for evaluating whether projects meet the requirements for a workforce housing tax incentives program while the department of revenue administers tax credit claims and transfers.

**304.53(1) Definitions.**

“Costs directly related” means the same as defined in rule 261—48.3(15).

“Qualifying new investment” means the same as defined in rule 261—48.3(15).

**304.53(2) Workforce housing tax incentives.** The economic development authority will allocate no more than \$20 million in tax incentives for this program for any fiscal year, \$5 million of which shall be reserved for allocation to qualified housing projects in small cities, as defined in Iowa Code section 15.352(10), that are registered on or after July 1, 2017. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

*a. Sales tax refund.* A housing business may claim a refund of the sales and use tax described in rule 701—258.1(15).

*b. Investment tax credit.*

(1) Computation of the credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project not located in a small city, or 20 percent of the qualifying new investment in a housing project located in a small city.

(2) Allocation of the tax credit to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, 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, estate, or trust.

(3) Refundability. Any tax credit in excess of the taxpayer's liability for the tax year is not refundable.

(4) Carryforward. Any tax credit in excess of the taxpayer's liability may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

**304.53(3) Claiming the tax credit—information required.** The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.53(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

**304.53(4) Basis adjustment.** The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For

example, if a new housing project had qualifying new investment of \$1 million which resulted in a \$100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be \$900,000.

**304.53(5) Transfer of the credit.**

*a. Submission of transferred tax credit certificate to the department—information required.* Tax credit certificates issued under an agreement entered into pursuant to subrule 42.53(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable.

*b. Issuance of replacement certificate by the department.* Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

*c. Claiming the transferred tax credit.* A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

*d. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than the minimum amount established in rule by the economic development authority.

*e. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in subparagraph 42.53(2)“b”(4) shall apply.

**304.53(6) Repayment of benefits.** If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of Iowa Code section 15.353. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.

[ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 3837C, IAB 6/6/18, effective 7/11/18; ARC 6398C, IAB 7/13/22, effective 7/1/22; Editorial change: IAC Supplement 11/2/22]

**701—304.54(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after July 1, 2014, and before August 15, 2016.** For projects registered before August 15, 2016, the department of cultural affairs is authorized by the general assembly to

award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—42.19(404A,422). The department of revenue's provisions for projects registered on or after July 1, 2014, and before August 15, 2016, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48.

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue's provisions for projects registered on or after August 15, 2016, are found in rule 701—42.55(404A,422). The economic development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects registered on or after July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—42.55(404A,422).

**304.54(1)** *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* Taxpayers that want to claim an income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are available on the department of cultural affairs' website. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

**304.54(2)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

**304.54(3)** *Qualified rehabilitation expenditures.* “Qualified rehabilitation expenditures” means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

*a. Type of property and services eligible.* In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be “qualified rehabilitation

expenditures” in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered “qualified rehabilitation expenditures” if they are for “structural components,” as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

*b. Effect of financing sources on eligibility of expenditures.* Qualified rehabilitation expenditures do not include expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

**304.54(4)** *Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.* After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer’s eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

*a. Claiming the credit.* For the taxpayer to claim the credit, the certificate must be included with the taxpayer’s income tax return for the tax year in which the rehabilitation project is completed or the income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 42.54(4) “d” below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

*b. Information required.* The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 42.54(4) “c” below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.54(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

*c. Refundability.* A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer’s tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. See department of cultural affairs’ 223—Chapter 48. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.54(5).

*d. Carryforward.* If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.54(4) “b,” the amount in excess of the taxpayer’s tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later

than the year of project completion as described in paragraph 42.54(4)“a,” the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

*e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the estate or trust.

**304.54(5) Transfer of the historic preservation and cultural and entertainment district tax credit.** The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee’s name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

*d. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.54(4) “d” shall apply.

**304.54(6) Appeals.** Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.11D.

[ARC 1968C, IAB 4/15/15, effective 5/20/15; ARC 2928C, IAB 2/1/17, effective 3/8/17; Editorial change: IAC Supplement 11/2/22]

**701—304.55(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after August 15, 2016.** The economic development authority is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the economic development authority, the department of cultural affairs and the department of revenue adopt rules as necessary to administer Iowa Code chapter 404A. In general, the department of revenue is responsible for administering tax credit transfers and processing and auditing tax credits claimed on returns. For the economic development authority’s rules on the credit program, see 261—Chapter 49. For the department of cultural affairs’ rules on the credit program, see 223—Chapter 48.

**304.55(1) Program transition.** 2016 Iowa Acts, House File 2443, made several changes to the credit program, including transferring primary responsibility for the program’s administration from the department of cultural affairs to the economic development authority. Projects registered prior to August 15, 2016, remain under the purview of the department of cultural affairs, with assistance from the department of revenue. For department of revenue rules related to projects registered prior to August 15, 2016, see rules 701—42.54(404A,422) and 701—42.19(404A,422).

**304.55(2) Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.** For rules on the application, registration, and agreement process, see economic development authority rules, 261—Chapter 49.

**304.55(3) Computation of the amount of the historic preservation and cultural and entertainment district tax credit.** The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the economic development authority following project completion, up to the amount specified in the agreement between the taxpayer and the economic development authority. For more information on the credit computation, see economic development authority rules, 261—Chapter 49. The amount remains subject to audit by the department of revenue when the credit is claimed on the taxpayer’s tax return.

**304.55(4) Qualified rehabilitation expenditures.** “Qualified rehabilitation expenditures” means the same as defined in Iowa Code section 404A.1(7) and rule 261—49.5(404A) of economic development authority rules. In the event of an audit, the department of revenue evaluates whether expenditures comply with the agreement between the economic development authority and the eligible taxpayer, as well as with applicable statutes and rules, including Internal Revenue Code Section 47 and its related regulations.

**304.55(5) Completion of the qualified rehabilitation project and claiming the tax credit.** After the economic development authority verifies the taxpayer’s eligibility for the tax credit, the economic development authority shall issue a tax credit certificate. For more information on credit certificate issuance, see economic development authority rules, 261—Chapter 49.

*a. Claiming the credit.* For the taxpayer to claim the credit, the certificate must be included with the taxpayer’s income tax return for the tax year in which the rehabilitation project is completed or the income tax return for any year within the five years following the year of project completion. Taxpayers that elect to delay claiming the credit to a later year’s return as described in this paragraph are subject to

the carryforward limitations described in paragraph 42.55(5) “d” below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

*b. Information required.* The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 42.55(5) “c” below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.55(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

*c. Refundability.* A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer’s tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the economic development authority. See the economic development authority’s rule 261—49.15(404A). Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.55(6).

*d. Carryforward.* If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.55(5) “b,” the amount in excess of the taxpayer’s tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 42.55(5) “a,” the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

*e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the estate or trust.

**304.55(6) Transfer of the historic preservation and cultural and entertainment district tax credit.** The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year that the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee’s name, address and tax identification number, the amount of the

tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax credit certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

*d. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.55(4) “d” shall apply.

**304.55(7) Appeals.** Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.11D.

[ARC 2928C, IAB 2/1/17, effective 3/8/17; Editorial change: IAC Supplement 11/2/22]

**701—304.56(15,422) Renewable chemical production tax credit program.** An eligible business that has received a renewable chemical production tax credit certificate from the economic development authority may claim a tax credit against individual income tax. The credit is equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in Iowa from biomass feedstock by the eligible business during a given production year, subject to the limitations described in Iowa Code sections 15.315 through 15.322, 261—Chapter 81, and this rule. The economic development authority’s rules on eligibility for the credit may be found in 261—Chapter 81.

**304.56(1) Application and agreement for the credit.** To be eligible for the tax credit, the eligible business must apply to and enter into an agreement with the economic development authority. The economic development authority’s rules on the application and agreement process may be found in 261—Chapter 81.

**304.56(2) Computation of the amount of credit and certificate issuance.** Upon establishing that all requirements of the program and the agreement have been fulfilled and verifying the taxpayer’s eligibility for the tax credit, the economic development authority calculates the credit. Then the economic development authority issues the related tax credit certificate to the eligible business stating

the amount of the renewable chemical production tax credit that the eligible business may claim. A tax credit certificate shall not be issued by the economic development authority prior to July 1, 2018. The economic development authority's rules on credit certificate issuance may be found in 261—Chapter 81.

**304.56(3) Claiming the tax credit.**

*a. Claiming the credit, generally.* To claim the credit, a taxpayer must include one or more tax credit certificates with the taxpayer's tax return for the tax year during which the eligible business was issued the tax credit certificate or certificates. If the taxpayer claiming the credit has already filed a return for the tax year for which the credit certificate was issued, the taxpayer may claim the credit on an amended return. The taxpayer must file the amended return within the statute of limitations applicable to such amended return. No tax credit may be claimed under this program by a taxpayer prior to September 1, 2018.

*b. Claiming the credit of a pass-through entity.* To claim the credit of an eligible business that is a pass-through entity, an individual taxpayer must claim the credit on the tax return for the tax year during which the eligible business received the tax credit certificate. Such tax year may be either the tax year of the eligible business or of the individual.

EXAMPLE: A partnership has a fiscal year of September 2017 through August 2018. The partnership receives a renewable chemical production tax credit certificate under this program in July 2018, which is during the partnership's 2017 tax year. A partner in the partnership files individual returns on a calendar year basis, which means that the credit was issued in the partner's 2018 tax year. That partner may file an amended 2017 tax return to claim the credit based on the partnership's tax year, or that partner may claim the credit on the partner's 2018 tax return based on the partner's own tax year.

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

*d. Allocation to the individual owners of the entity or beneficiaries of an estate or trust.* An individual may claim the credit of a partnership, limited liability company, S corporation, cooperative organized under Iowa Code chapter 501 and filing as a partnership for tax purposes, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based on the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, cooperative, estate, or trust.

*e. Refundability.* Any 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.

*f. Transferability.* Tax credit certificates shall not be transferred to any other person.

*g. Rescission and recapture.* The tax credit certificate, unless rescinded by the economic development authority, shall be accepted by the department of revenue, subject to any conditions or restrictions placed upon the face of the tax credit certificate by the economic development authority and subject to the limitations of the program. Should the economic development authority reduce, terminate, or rescind any tax credits issued under the program, the eligible business may be subject to the repayment or recapture of any credits already claimed. The economic development authority's rules related to the program may be found in 261—Chapter 81. The repayment of tax credits or recapture by the department of revenue shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

This rule is intended to implement Iowa Code section 422.10B.

[ARC 3008C, IAB 3/29/17, effective 5/3/17; Editorial change: IAC Supplement 11/2/22]

**701—304.57(15E,422) Hoover presidential library tax credit.**

**304.57(1) In general.**

*a.* A taxpayer who makes an unconditional charitable donation to the Hoover presidential foundation for the Hoover presidential library and museum renovation project fund may qualify for a Hoover presidential library tax credit, subject to the availability of the credit and approval by the economic development authority.

b. The credit is equal to 25 percent of a donor's unconditional charitable donation that meets both of the following requirements:

- (1) The donation is made on or after July 1, 2021.
- (2) The donation is made during a donor's tax year beginning on or after January 1, 2021, but before January 1, 2024.

c. The amount of the donation for which the tax credit is claimed is not deductible in determining taxable income for Iowa tax purposes.

d. The administrative rules for the economic development authority's administration of this program are found in 261—Chapter 43 and describe the tax credit program cap limitations including reserved amounts, donor cap limitations, the application process and waitlist, and other requirements.

**304.57(2) Claiming the credit.**

a. *Issuance of tax credit certificates.* The economic development authority shall issue a tax credit certificate to each taxpayer who makes a qualifying donation and whose tax credit application has been approved. The tax credit certificate, designed by the department, will contain the name, address, and tax identification number of the taxpayer; the amount and date the contribution was made; the amount of the credit; the tax year to which the credit may be applied; the tax credit certificate number; and any other information required by the department. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed.

b. *Year of claim.* The tax credit shall be claimed for the tax year during which the donation is made. However, for a donor who has an application placed on the waitlist described in 261—subrule 43.5(3) and later has the waitlisted application approved for a reserved tax credit amount, the waitlisted donor shall claim the tax credit for the tax year during which the tax credit certificate is issued.

c. *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If the taxpayer claiming the Hoover presidential library tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual, an individual may claim the credit. 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, estate, or trust.

d. *Carryforward.* Any tax credit in excess of the donor's tax liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year for which the donor claims the tax credit.

e. *Transferability.* The credit may not be transferred to any other person.

This rule is intended to implement Iowa Code sections 15E.364 and 422.11T as enacted by 2021 Iowa Acts, House File 588, sections 1 and 2.

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CHAPTER 307  
WITHHOLDING

[Prior to 12/17/86, Revenue Department[730]]  
[Prior to 11/2/22, see Revenue Department[701] Ch 46]

**701—307.1(422) Who must withhold.**

**307.1(1) Requirement of withholding.**

*a. General rule.* Every employer maintaining an office or transacting business within this state and required under provisions of Sections 3401 to 3404 of the Internal Revenue Code to withhold and pay federal income tax on compensation paid for services performed in this state to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in Section 3401(b) of the Internal Revenue Code) an amount computed in accordance with subrules 307.2(1) and 307.2(2). Iowa income tax is not required to be withheld on any compensation paid in this state of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., FICA taxes), except as provided in rule 701—307.4(422).

*b. Examples.* Paragraph “a” above may be illustrated by the following examples:

(1) *Temporary help.* A is a typist in the offices of B corporation, where she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Iowa. C renders a weekly bill to B corporation for A’s services, and C then pays A. B corporation is not A’s “employer” within Section 3401(d) of the Internal Revenue Code, and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A’s compensation. Since B corporation is not required to withhold a tax for federal purposes on A’s compensation, B is not required to do so for Iowa purposes. C, the temporary help agency, however, is required to withhold from A’s compensation for federal purposes and must also do so for Iowa purposes.

(2) *Domestic help.* A is employed as a cook by Mr. and Mrs. B. The B’s are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold income tax from such compensation under the Internal Revenue Code, because under Section 3401(a)(3), A’s compensation does not constitute “wages”. Since the B’s are not required to withhold income tax for federal purposes, they are not required to do so for Iowa purposes.

(3) *Executives.* A is a corporate executive. On January 1, 1998, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of five years. Under the contract, A is entitled to a stated annual salary and to additional compensation of \$10,000 for each year. The additional compensation is to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of \$5,000 on A’s retirement beginning January 1, 2003. In the event of A’s death prior to exhaustion of the account, the balance is to be paid to A’s personal representative. A is not required to render any service to B after December 31, 2002. During 2003, A is paid \$5,000 while a resident of Iowa. The \$5,000 is not excluded from “wages” under Section 3401(a) of the Internal Revenue Code; therefore, B is required to withhold federal income tax, and, since it is compensation paid in this state, B must withhold Iowa income tax on A’s deferred compensation.

(4) *Agricultural labor.* Wages paid for agricultural labor are subject to withholding for state income tax purposes to the same extent that the wages are subject to withholding for federal income tax purposes.

*c. Exemption from withholding.* An employer may be relieved of the responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the current tax year.

An employee who anticipates no Iowa income tax liability for the current tax year shall file with the employer a withholding allowance certificate claiming exemption from withholding. An employee who meets this criterion may claim an exemption from withholding at any time; however, this exemption from withholding must be renewed by February 15 of each tax year that the criterion is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates

a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. Subrule 307.3(3) contains more information.

*d. Withholding from lottery winnings.* Every person, including employees and agents of the Iowa lottery authority, making any payment of “winnings subject to withholding” shall deduct and withhold a tax in an amount equal to 5 percent of the winnings. The tax shall be deducted and withheld upon payment of the winnings to a payee by the person or payer making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation §31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the lottery winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form shall include the information described in Treasury Regulation §31.3402(q)-1, paragraph “f.”

“Winnings subject to withholding” means any payment where the proceeds from a wager exceed \$600. The rules for determining the amount of proceeds from a wager under Treasury Regulation Section 31.3402(q)-1, paragraph “c,” shall apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required. This rule shall apply to winnings from tickets purchased from the Powerball and Hot Lotto games or any other similar games to the extent the tickets were purchased within the state of Iowa.

*e. Withholding from prizes from games of skill, games of chance, or raffles.* Every person making any payment of a “prize subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. Effective July 1, 2015, any person making any payment of a “prize subject to withholding” for bingo must withhold tax in the same manner as persons making payments of prizes subject to withholding for games of skill, games of chance, or raffles. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph “f.”

“Prizes subject to withholding” means any payment of a prize where the amount won exceeds \$600.

*f. Withholding from winnings from pari-mutuel wagers.* Every person making any payment of “winnings subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the winnings from pari-mutuel wagers. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph “f.”

“Winnings subject to withholding” are winnings in excess of \$1,000.

*g. Withholding from winnings from slot machines on riverboat gambling vessels and from winnings from slot machines at racetracks.* Withholding of state income tax is required if the winnings from slot machines on riverboat gambling vessels or from slot machines at racetracks exceed \$1,200.

**307.1(2)** *Withholding on pensions, annuities and other nonwage payments to Iowa residents.* State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans,

deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. See paragraph 307.1(2)“h” for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual’s permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient’s account in a financial institution located outside Iowa does not mean that the recipient’s permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.

*a. Withholding from pension and annuity payments to residents.* Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph 307.1(2)“h” for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law.

*b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies.* Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph 307.1(2)“h” for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

*c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits.* Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject

to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits paid by third-party payers in accordance with Section 3402(o)(1) of the Internal Revenue Code, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—302.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld. For sick pay benefits not paid by third-party payers, state income tax is required to be withheld since federal income tax is required to be withheld.

*d. Voluntary state income tax withholding from unemployment benefit payments.* Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

*e. Withholding on lump-sum distributions from qualified retirement plans.* For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph 307.1(2)"h" for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001. Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

*f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas.* State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. See paragraph 307.1(2)"h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

*g. Withholding on distributions from qualified retirement plans that are not directly rolled over.* State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. See paragraph 307.1(2)“h” for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, 2001.

*h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans.* Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term “pensions and other retirement plans” includes all distributions of retirement benefits covered by the partial exemption described in rule 701—302.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—302.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—302.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, 99F.18, 422.5, 422.7, and 422.16.

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## **701—307.2(422) Computation of amount withheld.**

### **307.2(1) Amount withheld.**

*a. General rules.* Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee’s annual tax liability. “Payroll period” for Iowa withholding purposes shall have the same definition as in Section 3401 of the Internal Revenue Code and shall include “miscellaneous payroll period” as that term is defined and used in that section and the associated regulations.

*b. Methods of computations.* Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) *Tables.* An employer may elect to use the withholding tables provided in the Iowa employers' withholding tax guide and withholding tables, which are available from the department of revenue.

(2) *Formulas.* Formulas that are provided in the Iowa employers' withholding tax guide and tax tables are available for employers who have a computerized payroll system.

(3) *Other methods.* An employer may request and be granted the use of an alternate method for computing the amount of Iowa tax to be deducted and withheld for each payroll period so long as the alternate proposal approximates the employee's annual Iowa tax liability. When submitting an alternate formula, the withholding agent should explain the formula and show examples comparing the amount of withholding under the proposed formula with the department's tables or computer formula at various income levels and by using various numbers of personal exemptions. Any alternate formula must be approved by the department prior to its use.

*c. Supplemental wage payments.* A supplemental wage payment is the payment of a bonus, commission, overtime pay, or other special payment that is made in addition to the employee's regular wage payment in a payroll period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined by using the current withholding tables or formulas. If supplemental wages are paid at the same time as regular wages, the regular tables or formulas are used in determining the amount of tax to be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at any other time, the regular tables or formulas are used in determining the amount of tax to be withheld as if the supplemental wage were a single wage payment for the regular payroll period. When a withholding agent makes a payment of supplemental wages to an employee and the employer withholds federal income tax on a flat-rate basis, pursuant to Treasury Regulation §31.3402(g)-1, state income tax shall be withheld from the supplemental wages at a rate of 6 percent without consideration for any withholding allowances or exemptions.

*d. Vacation pay.* Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be treated as supplemental wage payments.

### **307.2(2) Correction of underwithholding or overwithholding.**

*a. Underwithholding.* If an employer erroneously underwithholds an amount of Iowa income tax required to be deducted and withheld from compensation paid to an employee within a payroll period, the employer should correct the error within the same calendar year by deducting the difference between the amount withheld and the amount required to be withheld from any compensation still owed the employee, even though such compensation may not be subject to withholding. If the error is discovered in a subsequent calendar year, no correction shall be made by the employer.

*b. Overwithholding.* If an employer erroneously overwithholds an amount of tax required to be deducted and withheld from compensation paid to an employee, repayment of such overwithheld amount shall be made in the same calendar year. Repayment may be made in either of two ways: (1) the amount of overwithholding may be repaid directly to the employee, in which case the employer must obtain written receipt showing the date and amount of the repayment, or (2) the employer may reimburse the employee by applying the overcollection against the tax required to be deducted and withheld on compensation to be paid in the same calendar year in which the overcollection occurred. If the error is discovered in a subsequent calendar year, no repayment shall be made.

This rule is intended to implement Iowa Code section 422.16.

[Editorial change: IAC Supplement 11/2/22]

## **701—307.3(422) Forms, returns, and reports.**

**307.3(1) Definitions.** For the purposes of this rule, the following definitions apply:

"GovConnectIowa" means the e-services portal of the department of revenue.

“*Income statement*” means a statement that conforms to the requirements of Iowa Code section 422.16(7) “a.” An income statement includes, but is not limited to, Internal Revenue Service (IRS) Form W-2, IRS Form 1099, and IRS Form W-2G.

“*Payee*” means an employee or other person who had Iowa income tax withheld pursuant to Iowa Code section 422.16.

“*Payer*” means an employer or other person required to withhold and remit Iowa income tax pursuant to Iowa Code section 422.16.

**307.3(2) *Withholding registration.***

a. Every payer required to deduct and withhold Iowa income tax must register with the department of revenue by filing an Iowa Business Tax Registration Form either on a paper form available online at [tax.iowa.gov](http://tax.iowa.gov) or through GovConnectIowa. The form shall indicate the payer’s federal employer identification number. If a payer has not received a federal employer identification number, the payer must notify the department of the payer’s federal employer identification number once the number has been assigned. If a payer fails to provide the payer’s federal employer identification number within 90 days of the registration filing, the department will consider the payer’s withholding registration invalid.

b. If a payer deducts and withholds Iowa income tax but does not file the Iowa Business Tax Registration Form, the department may register the payer using the best information available. If a payer uses a service provider to report and remit Iowa withholding tax on behalf of the payer, the department may use information obtained from the service provider to register the payer if an Iowa Business Tax Registration Form is not filed. This information would include, but is not limited to, the name, address, federal employer identification number, filing frequency, and withholding contact of the payer.

**307.3(3) *Allowance certificate.***

a. *General rules.* On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee’s withholding allowance certificate (IA W-4) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish a certificate, the employee shall be considered as claiming no withholding allowances. Subrule 307.3(5) contains information on Form IA W-4P, which is to be used by payers of pensions, annuities, deferred compensation, individual retirement accounts and other retirement incomes.

The employer must submit to the department of revenue a copy of a withholding allowance certificate received from an employee if:

- (1) The employee claimed more than a total of 22 withholding allowances, or
- (2) The employee is claiming an exemption from withholding and it is expected that the employee’s wages from that employer will normally exceed \$200 per week.

Employers required to submit withholding certificates should use the following address:

Iowa Department of Revenue  
Compliance Division  
Examination Section  
Hoover State Office Building  
P.O. Box 10456  
Des Moines, Iowa 50306

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding allowances.

b. *Form and content.* The “Iowa Employee’s Withholding Allowance Certificate” (IA W-4) must be used to determine the number of allowances that may be claimed by an employee for Iowa income tax withholding purposes. Generally, the greater number of allowances an employee is entitled to claim, the lower the amount of Iowa income tax to be withheld for the employee. The following withholding allowances may be claimed on the IA W-4 form:

- (1) Personal allowances. An employee can claim one personal allowance or two if the individual is eligible to claim head of household status. The employee can claim an additional allowance if the employee is 65 years of age or older and another additional allowance if the employee is blind.

If the employee is married and the spouse either does not work or is not claiming an allowance on a separate W-4 form, the employee can claim an allowance for the spouse. The employee may also claim an additional allowance if the spouse is 65 years of age or older and still another allowance if the spouse is blind.

(2) Dependent allowances. The employee can claim an allowance for each dependent that the employee will be able to claim on the employee's Iowa return.

(3) Allowances for itemized deductions. The employee can claim allowances for itemized deductions to the extent the total amount of estimated itemized deductions for the tax year for the employee exceeds the applicable standard deduction amount by \$200. In instances where an employee is married and the employee's spouse is a wage-earner, the total allowances for itemized deductions for the employee and spouse should not exceed the aggregate amount itemized deduction allowances to which both taxpayers are entitled.

(4) Allowances for the child/dependent care credit. Employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of net income shown on the Iowa return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. Taxpayers that expect to have a net income of \$45,000 or more for a tax year beginning on or after January 1, 2006, should not claim withholding allowances for the child and dependent care credit, since these taxpayers are not eligible for the credit.

(5) Allowances for adjustments to income. For tax years beginning on or after January 1, 2008, employees can claim allowances for adjustments to income which are set forth in Treasury Regulation §31.3402(m)-1, paragraph "b." This includes adjustments to income such as alimony, deductible IRA contributions, student loan interest and moving expenses which are allowed as deductions in computing income subject to Iowa income tax. In instances where an employee is married and the employee's spouse is a wage earner, the withholding allowances claimed by both spouses for adjustments to income for the employee and spouse should not exceed the aggregate number of allowances to which both taxpayers are entitled.

*c. Change in allowances which affect the current calendar year.*

(1) Decrease. If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is less than the number of withholding allowances claimed by the individual on a withholding certificate then in effect, the employee must furnish the employer with a new Iowa withholding allowance certificate relating to the number of withholding allowances which the employee then claims, which must in no event exceed the number to which the employee is entitled on such day.

(2) Increase. If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is more than the number of withholding allowances claimed by the employee on the withholding allowance certificate then in effect, the employee may furnish the employer with a new Iowa withholding allowance certificate on which the employee must in no event claim more than the number of withholding allowances to which the employee is entitled on such day.

*d. Change in allowances which affect the next calendar year.* If, on any day during the calendar year, the number of withholding allowances to which the employee will be, or may reasonably be expected to be, entitled to for the employee's taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall apply:

(1) If such number is less than the number of withholding allowances claimed by an employee on an Iowa withholding allowance certificate in effect on such day, the employee must within a reasonable time furnish the employee's employer with a new withholding allowance certificate reflecting the decrease.

(2) If such number is greater than the number of withholding allowances claimed by the employee on an Iowa withholding allowance certificate in effect on such day, the employee may furnish the employee's employer with a new withholding allowance certificate reflecting the increase.

*e. Duration of allowance certificate.* An Iowa withholding allowance certificate which is in effect pursuant to these regulations shall continue in effect until another withholding allowance certificate takes effect. Employers should retain copies of the IA W-4 forms for at least four years.

**307.3(4) Reports and payments of income tax withheld.**

*a. Returns of income tax withheld from wages.*

(1) Quarterly returns. Every payer required to withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which tax is withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The payer's Iowa Withholding Tax Quarterly Return is the form prescribed for making the return required under this paragraph. Monthly tax deposits or semimonthly tax deposits may be required in addition to quarterly returns. Subparagraphs 307.3(4) "a"(2) and 307.3(4) "a"(3) contain more information about monthly and semimonthly tax deposits. In some circumstances, only an annual return and payment of withheld taxes will be required. Paragraph 307.3(4) "c" contains more information on annual reporting.

Payments shall be based upon the tax required to be withheld and must be remitted in full.

A payer is not required to list the name(s) of the payee(s) when filing quarterly returns.

If a payer's payroll is not constant, and the payer finds that no income was paid during the current quarter, the payer shall enter the numeral "zero" on the return and submit the return as usual.

(2) Monthly deposits. Every payer required to file a quarterly withholding return shall also file a monthly deposit if the amount of tax withheld during any calendar month exceeds \$500 but is less than \$10,000. No monthly deposit is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly deposit for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter, and no monthly deposit need be filed for such month.

(3) Semimonthly deposits. Every payer who withholds more than \$5,000 in a semimonthly period must file a semimonthly tax deposit. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly deposits are required, a payer must still file a quarterly return.

(4) Final returns. A payer who in any return period permanently ceases doing business shall file the returns required by subparagraphs 307.3(4) "a"(1), 307.3(4) "a"(2), and 307.3(4) "a"(3) as final returns for such period. The payer shall cancel the withholding registration by submitting the Iowa Business Tax Cancellation Form or through GovConnectIowa.

*b. Time for filing returns.*

(1) Quarterly returns. Each return required by subparagraph 307.3(4) "a"(1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) Monthly tax deposits. Monthly deposits required by subparagraph 307.3(4) "a"(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter for the first and second months of each calendar quarter, respectively.

(3) Semimonthly tax deposits. Semimonthly deposits required by subparagraph 307.3(4) "a"(3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month. The semimonthly deposits required by subparagraph 307.3(4) "a"(3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld.

Quarterly returns, amended returns, monthly deposits and semimonthly deposits shall be made electronically in a format and by means specified by the department of revenue. Tax payments are considered to have been made on the date that the tax is transmitted and released to the department. For withholding that occurs on or after January 1, 2022, tax payments shall be made using GovConnectIowa.

(4) Determination of payment frequency. The department and the department of management have the authority to change payment thresholds by department rule. This paragraph sets forth the payment thresholds and frequencies for each payer based on the amount withheld.

The following criteria will be used to determine if a change in payment frequency is warranted.

<u>Payment Frequency</u>	<u>Threshold</u>
Semimonthly	Greater than \$120,000 in annual withholding (more than \$5,000 in a semimonthly period).
Monthly	Between \$6,000 and \$120,000 in annual withholding (more than \$500 in a monthly period).
Quarterly	Less than \$6,000 in annual withholding.
Annual	Less than 3 employees.

1. To request to pay on a less frequent basis than required, the request must be in writing and submitted to the department. A payer's written request to be allowed to pay less frequently will be reviewed by the department, and a written determination will be issued to the payer who made the request. A change in payment frequency to pay on a less frequent basis will be granted in only two instances:

- Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
- Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

If a payer is permitted to pay on a less frequent basis, the payer must begin to pay on the less frequent basis at the start of the next quarter unless the payer is permitted to pay annually, in which case the payer must submit future payments in accordance with paragraph 307.3(4) "c."

2. A payer may also pay more frequently than required. No request is required to be made to pay on a more frequent basis.

3. The department and the department of management may perform a review of payment frequency thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the payment frequency thresholds need to be changed include but are not limited to tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

(5) Amended return. If the amount of Iowa income tax withheld and remitted to the department of revenue for the year is different than the withheld tax and withholding credits claimed, the payer must report the difference on an amended return and, if the return shows less tax withheld and remitted than shown due, the payer must submit payment to the department.

*c. Reporting annual withholding.*

(1) Any payer who does not have employee withholding but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of paragraph 307.3(4) "a," if these distributions are made annually in one calendar quarter. These payers need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld.

(2) Every payer employing not more than two individuals and who expects to employ either or both for the full calendar year may pay with the Iowa Withholding Tax Quarterly Return due for the first calendar quarter of the year the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The payer shall advise the department of revenue that annual reporting is contemplated and shall also state the number of persons employed. The payer shall compute the annual withholding from wages by determining the normal withholding for one pay period and

multiply this amount by the total number of pay periods within the calendar year. The payer shall be entitled to recover from the employee(s) any part of such lump-sum payment that represents an advance to the employee(s). If a payer pays a lump sum with the first quarterly return, the payer shall be excused from filing further quarterly returns for the calendar year involved unless the payer hires other or additional employees.

*d. Furnishing income statements to payee.*

(1) General rule. Every payer required to deduct and withhold income tax of a payee must furnish to each payee with respect to the income paid in Iowa by such payer during the calendar year an income statement containing the following information: the name, address, and taxpayer identification number of the payer; the name, address, and taxpayer identification number of the payee; the total amount of taxable income paid in Iowa; the total amount deducted and withheld as tax under subrule 307.1(1); and the total amount of federal income tax withheld.

(2) Form of income statement. The information required to be furnished to a payee under the preceding paragraph shall be furnished on the appropriate IRS form including but not limited to IRS Form W-2 and IRS Form 1099. Any reproduction, modification, or substitution for an IRS form by the payer must be approved by the department. Payers should keep copies of income statements for four years from the end of the year for which the income statements apply.

(3) Time for furnishing an income statement. Each income statement required by paragraph 307.3(4)“d” to be furnished for a calendar year and each corrected income statement required for any prior year shall be furnished to the payee on or before January 31 of the year succeeding such calendar year, or if an employee’s employment is terminated before the close of a calendar year without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee, but not later than January 31 of the following year. Paragraph 307.3(4)“e” contains provisions relating to the filing of copies of certain income statements with the department of revenue.

(4) Corrections. A payer must furnish a corrected income statement to a payee if, after the original statement has been furnished, an error is discovered in either the amount of income shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. The corrected statement shall be marked “corrected .”

(5) Undelivered income statements. Any payee’s copy of the income statement which, after reasonable effort, cannot be delivered to a payee shall be transmitted to the department with a letter of explanation.

(6) Lost or destroyed. If the income statement is lost or destroyed, the payer shall furnish a substitute copy to the payee. The copy shall be clearly marked “Reissued.”

(7) Penalty. A willful failure to meet the furnishing requirements set out in this paragraph will subject payers to the penalty under Iowa Code section 422.16(10)“a.” Rule 701—307.5(422) contains more information about this penalty.

*e. Filing income statements with the department.*

(1) For tax year 2019 and all subsequent tax years, all payers are required to electronically file all W-2 forms, W-2G forms, and 1099 forms for payees from whom Iowa income tax was withheld with the department of revenue on or before February 15 following the tax year. Income statements for tax years beginning on or after January 1, 2022, must be filed using GovConnectIowa.

(2) Corrections. A payer must file a corrected income statement with the department if, after the original statement has been filed, an error is discovered in either the amount of income shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. The corrected statement shall be marked “corrected.”

(3) Penalty. A willful failure to meet the filing requirements set out in Iowa Code section 422.16 and this paragraph will subject payers to the penalties under Iowa Code section 422.16(10). Rule 701—307.5(422) contains more information about this penalty.

(4) Other income statements. Any income statement not listed in this paragraph that cannot be submitted electronically must be filed with the department by mail on or before February 15 following the tax year.

(5) Extension. The director or the department employee designated by the director may allow a 30-day extension of time for filing income statements with the department in the case of illness, disability, or absence, or if good cause is shown. To apply for an extension, a payer shall use the form available on the department website.

*f. Withholding deemed to be held in trust.* Funds withheld from income for Iowa income tax purposes are deemed to be held in trust for payment to the department of revenue. The state and the department shall have a lien upon all the assets of the payer and all the property used in the conduct of the payer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien may exempt the property from the lien granted to Iowa by requiring the payer to obtain a certificate from the department, certifying that such payer has posted with the department security for the payment of the amounts withheld under this rule.

*g. Payment of tax deducted and withheld.* The amount of tax shown to be due on each deposit or return required to be filed under subrule 307.3(4) shall be due on or before the date on which such deposit or return is required to be filed.

*h. Correction of underpayment or overpayment of taxes withheld.*

(1) Underpayment. If a return is filed for a return period under rule 701—307.3(422) and less than the correct amount of tax is reported on the return and paid to the department, the payer shall report and pay the additional amount due by filing an amended Iowa Withholding Tax Quarterly Return.

(2) Overpayment. If a payer remits more than the correct amount of tax for a return period, the payer may file an amended Iowa Withholding Tax Quarterly Return and request a refund of the withholding tax paid which was not due.

**307.3(5) Iowa W-4P—withholding certificate for pension or annuity payments.**

*a.* For payments made from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payers of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld to the extent the monthly payment amount is \$500 or less or the taxable amount per month is \$500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—302.47(422). In addition, no state income tax is required to be withheld to the extent the monthly payment amount is \$1,000 or less or the taxable amount per month is \$1,000 or less if the payee is married and eligible for the retirement benefits exclusion described in rule 701—302.47(422).

*b.* Form IA W-4P is available from the department for payers of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$6,000 to \$12,000 exclusion is considered. Note that the \$6,000 to \$12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$6,000 to \$12,000 in payments made in the year to an individual. If an individual receives retirement benefits and has not completed Form IA W-4P, the payer is directed to withhold Iowa income tax from the retirement benefit payment after a \$6,000 exclusion is allowed on an annual basis.

*c.* Payers of retirement benefits that want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.

*d.* The payers are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payers cannot accept a request for exemption from the withholding of state income tax made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.

This rule is intended to implement Iowa Code sections 422.7, 422.12C, and 422.16.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 2739C, IAB 9/28/16, effective 11/2/16; ARC 3429C, IAB 10/25/17, effective 11/29/17; ARC 4678C, IAB 9/25/19, effective 10/30/19; ARC 5518C, IAB 3/10/21, effective 4/14/21; Editorial change: IAC Supplement 11/2/22; ARC 6904C, IAB 2/22/23, effective 3/29/23]

**701—307.4(422) Withholding on nonresidents.**

**307.4(1) General rules.** Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit the tax to the department on all payments of Iowa income to nonresidents except as otherwise described in this rule. Withholding agents should use the following methods and rates in withholding for nonresidents:

*a. Wages or salaries.* Use the same withholding procedures, tables, formulas, and rates as are used for residents. See rule 701—307.2(422). Subrule 307.4(5) is an exception to the general rule. In addition, in accordance with the reciprocal tax agreement between Iowa and Illinois described in 701—subrule 300.13(1), Iowa withholding tax is not withheld on wages of Illinois residents who perform personal services in Iowa.

*b. Payments other than wages, salaries, and other compensation for personal services.* In lieu of using withholding tables or computer formulas to determine the amount of Iowa income tax to be withheld from payments made to nonresidents other than for salaries, wages, or other compensation for personal services, or income payments to nonresidents for agricultural commodities or products, Iowa income tax should be withheld at a rate of 5 percent of the amount of the payment. Subrule 307.4(6) describes the optional exemption from withholding of income payments made to nonresidents for the sale of agricultural commodities or products.

Nonresidents who prefer to make Iowa estimate payments instead of having Iowa income tax withheld from income payments from Iowa sources should refer to subrule 307.4(3) and rule 701—308.3(422).

**307.4(2) Income of nonresidents subject to withholding.** Listed below are various types of income paid to nonresidents which are subject to withholding. The list is for illustrative purposes only and is not deemed to be all-inclusive.

*a.* Personal service, including salaries, wages, commissions and fees for personal service wholly performed within this state and such portions of similar income of nonresident traveling salespersons or agents as may be derived from services rendered in this state.

*b.* Rents and royalties from real or personal property located within this state.

*c.* Interest or dividends derived from securities or investments within this state, when such interests or dividends constitute income of any business, trade, profession or occupation carried on within this state and subject to taxation.

*d.* Income derived from any business of a temporary nature carried on within this state by a nonresident, such as contracts for construction and similar contracts.

*e.* Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered to clients in this state.

*f.* Compensation received by nonresident actors, singers, performers, entertainers, and wrestlers for performances in this state. See subrule 307.4(5) for an exception to this rule.

*g.* The Iowa gross income of a nonresident who is employed and receiving compensation for services shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

*h.* The gross income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made whose compensation depends directly on volume of business transacted by the nonresident, includes that proportion of the total compensation received which the volume of business or sales by the employee within this state bears to the total volume of business or sales within and without the state.

*i.* Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by the landlord. Subrule 307.5(6) contains information about the exemption from withholding on incomes paid to nonresidents for the sale of agricultural commodities or products.

*j.* Wages paid to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a railway company or for a motor carrier are not taxable to Iowa. Pursuant to 49 U.S.C. Section 11502, the nonresidents in this situation are subject only to the income tax

laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax.

*k.* Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa and one or more states for an airline company. In accordance with 49 U.S.C. Section 40116, airline employees who are nonresidents of Iowa are subject only to the income tax laws of their states of residence or the state in which they perform 50 percent or more of their duties.

*l.* Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa for a merchant marine company. In accordance with 46 U.S.C. Section 11108, interstate waterway workers who are nonresidents of Iowa are subject only to the income tax laws of their states of residence.

**307.4(3) *Nonresident certificate of release.*** Where a nonresident payee makes the option to pay estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) and payer(s), and will state the amount of income covered by the estimated tax payment. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See 701—Chapter 308 for information on making estimate payments.

**307.4(4) *Recovering excess tax withheld.*** A nonresident payee may recover any excess Iowa income tax withheld from income of the payee by filing an Iowa income tax return after the close of the tax year and reporting income from Iowa sources in accordance with the income tax return instructions.

**307.4(5) *Exemption from withholding of nonresidents engaged in film production or television production in this state.*** Nonresidents engaged in film production or television production in this state are not subject to state withholding on wages earned from this activity if the nonresidents' employer has applied to the department for exemption from withholding of state income tax and the employer's application includes the following information about the nonresident employees:

- a.* The employees' names.
- b.* The employees' permanent mailing addresses.
- c.* The employees' social security numbers.
- d.* The estimated amounts the employees are to be paid for services provided by the employees in this state.

The employer's application for exemption from withholding for the nonresident employees will not be approved by the department if the employer fails to provide all the required information.

Only those nonresident employees described in the application for exemption from withholding will be covered when the application is approved by the department. If additional nonresident employees are hired after the initial application for exemption is filed, those employees should be described in an amendment to the application for exemption which must be filed with the department of revenue.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

**307.4(6) *Exemption from withholding for the sale of agricultural commodities or products.*** Withholding agents are not required to withhold state income tax from income payments made to nonresidents or representatives of the nonresidents for the sales of agricultural commodities or products, if the withholding agents provide certain information to the department of revenue about the sales. The following paragraphs describe the agricultural commodities and products that are included in the exemption from withholding, specify the information needed on the sales and clarify other issues related to the exemption from withholding. 701—subrule 308.3(4) describes an election for withholding agents to make estimate payments on behalf of nonresident taxpayers for net incomes of the nonresidents from agricultural commodities or products.

*a.* Agricultural commodities or products included in the exemption from withholding. Withholding agents are not required to withhold state income tax from income payments they make to nonresidents or representatives of the nonresidents for the sale of commodity credit certificates, grain (corn, soybeans, wheat, oats, etc.), livestock (cattle, hogs, sheep, horses, etc.), domestic fowl (chickens,

ducks, turkeys, geese, etc.), or any other agricultural commodities or products, if the withholding agents provide the department of revenue with the information specified in paragraph “b” of this subrule.

b. Information to be provided to the department by withholding agents claiming exemption from withholding on income payments made to nonresidents for the sales of agricultural items. The following information is to be provided on a listing to the department of revenue by withholding agents electing exemption from withholding of state income tax on income payments made in the calendar year to nonresidents or representatives of the nonresidents on the sales of agricultural commodities or products made in the year:

- (1) Name of the nonresident (last name, first name and middle initial).
- (2) Home address of the nonresident.
- (3) Social security number of the nonresident.
- (4) Aggregate payments made in the calendar year for the nonresident (includes payments made to a representative of the nonresident on behalf of the nonresident).
- (5) Two-digit Iowa county code number of the first one of the following that applies to the nonresident:
  1. County in which the nonresident owns real property or personal property.
  2. County in which the nonresident leases real property or personal property.
  3. County in which the nonresident has agricultural products stored or in which livestock is located.
  4. County where the nonresident has performed custom farming activities in the year.
  5. County where the nonresident has other business activities in Iowa other than merely sales activities.

If a nonresident does not own or lease property in Iowa or have other connection with Iowa as described in subparagraph 307.4(6) “b”(5), items “3,” “4,” and “5,” the nonresident is not subject to Iowa income tax on the income payments for agricultural commodities or products and the nonresident’s income payments should not be included on the listing.

In a situation where a withholding agent is unable to get all the information that is to be provided to the department on income payments on sales of agricultural items, the agent is relieved of the requirement to withhold if the agent can provide written evidence showing an attempt was made to acquire all the information.

The listing of aggregate income payments to nonresidents with an Iowa connection for sales of agricultural commodities and products in the calendar year should be sent to the department by the withholding agent on or before April 1 of the year following the year in which the income payments were made. In lieu of the listing, the withholding agent may compile the information on aggregate income payments to nonresidents on a magnetic tape, diskette or other electronic reporting, provided the submission meets departmental guidelines described in 701—paragraph 8.3(1) “e.”

The listing, magnetic tape or other electronic submission should be sent to the following address: Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306; [idr@iowa.gov](mailto:idr@iowa.gov).

A withholding agent is not exempt from withholding of state income tax on income payments to nonresidents on sales of agricultural commodities or products if the withholding agent does not provide the department of revenue with information on income payments made during the year by April 1 of the subsequent year.

**307.4(7)** *Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities.* Iowa income tax withholding is not required from payments of deferred compensation, pensions, and annuities made to nonresidents which are attributable to personal services of the nonresidents in Iowa since these payments are not subject to Iowa income tax. See rule 701—302.45(422) for the exclusion from Iowa income tax for these payments received by nonresidents.

**307.4(8)** *Exemption from withholding of a nonresident’s distributive share of income from a pass-through entity.* For tax years beginning on or after January 1, 2022, a partnership, S corporation, estate, or trust is not required to withhold state income tax on a nonresident member’s distributive share

of Iowa-source income from the pass-through entity. Instead, pass-through entities are subject to the composite return requirements in 701—Chapter 405.

**307.4(9) Exemption from withholding of payments made to an out-of-state business or out-of-state employee due to state-declared disaster.** On or after January 1, 2016, see 701—Chapter 276 for withholding requirements of 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.

This rule is intended to implement Iowa Code section 422.15, Iowa Code section 422.16 as amended by 2007 Iowa Acts, House File 923, section 16, and Iowa Code sections 422.17 and 422.73.

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### **701—307.5(422) Penalty and interest.**

**307.5(1) Definitions.** For the purposes of this rule, the following definitions apply:

“*Income statement*” means a statement that conforms to the requirements of Iowa Code section 422.16(7)“a.” An income statement includes, but is not limited to, Internal Revenue Service (IRS) Form W-2, IRS Form 1099, and IRS Form W-2G.

“*Payee*” means an employee or other person who had Iowa income tax withheld pursuant to Iowa Code section 422.16.

“*Payer*” means an employer or other person required to withhold and remit Iowa income tax pursuant to Iowa Code section 422.16.

**307.5(2) Penalties for willful failure to file or furnish an income statement or for willfully filing or furnishing a false or fraudulent income statement.**

a. Payers responsible for furnishing an income statement to a payee as described in paragraph 307.3(4)“d” and for filing an income statement with the department as described in paragraph 307.3(4)“e” shall be subject to a \$500 penalty for each instance of any of the following:

(1) Willful failure to furnish an income statement to a payee by January 31 of the year following the year in which income tax is withheld.

(2) Willful failure to file an income statement with the department by February 15 of the year following the year in which income tax is withheld.

(3) Willfully furnishing a false or fraudulent income statement to a payee.

(4) Willfully filing a false or fraudulent income statement with the department.

b. Penalties assessed under this subrule may not be waived.

c. Penalties assessed under this subrule are in addition to any other penalty allowed under law.

**307.5(3) Penalties for failure to file a return or failure to pay.**

a. Payers are subject to the penalties provided in Iowa Code section 421.27 for failure to file a quarterly return and failure to remit any withholding due. A penalty assessed under Iowa Code section 421.27 is in addition to any penalty assessed under law. Rule 701—10.6(421) contains a further explanation and examples applying the penalties under Iowa Code section 421.27. The penalties imposed under Iowa Code sections 421.27(1), 421.27(2), and 421.27(3) may be subject to waiver. Rule 701—10.7(421) contains details on penalty waivers.

b. Pursuant to Iowa Code section 421.27(4), if the department determines that the payer willfully failed to file or pay with the intent to evade tax or a filing requirement, the penalty shall be 75 percent of the unpaid tax. In this case, the penalty is not subject to waiver.

**307.5(4) Computation of interest on unpaid tax.** Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. Rule 701—10.2(421) contains more information about the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

**307.5(5) Computation of interest on overpayments.** If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is later.

**307.5(6) Examples.**

EXAMPLE 1: Employer has ten employees, all residing in Iowa. After the close of the tax year, Employer fails to furnish two of its employees with W-2s by January 31 of the following year. Additionally, Employer fails to file any W-2s with the department by February 15 of the following year and does not request an extension. If the department determines that Employer's failures to furnish two W-2s to its employees and file ten W-2s with the department were willful, the department shall assess a penalty in the amount of \$6,000 (12 instances x \$500).

EXAMPLE 2: The same facts as Example 1, but the department determines Employer underpaid its withholding obligations by \$2,000 for the tax year. Employer timely filed its required quarterly returns. In addition to the penalties assessed in Example 1, Employer shall be assessed a penalty of \$100 (5% x \$2,000) for failure to pay, plus interest calculated pursuant to subrule 307.5(5). If the department determines Employer willfully underpaid and filed a false return in order to avoid paying Iowa withholding, the department shall assess a penalty of \$1,500 (75% x \$2,000).

This rule is intended to implement Iowa Code sections 421.27, 422.16, and 422.25.  
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**701—307.6(422) Withholding tax credit to workforce development fund.** Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E, the community college which provided the training is to notify the economic development authority of the amount paid by the employer or business to the community college during the previous 12 months. The economic development authority is to notify the department of revenue of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed \$4 million for fiscal years beginning on or after July 1, 2001, but before July 1, 2014. The aggregate amount is not to exceed \$5,750,000 for the fiscal year beginning July 1, 2014, and the aggregate amount is not to exceed \$6,000,000 for fiscal years beginning on or after July 1, 2015.

This rule is intended to implement Iowa Code section 422.16A as amended by 2014 Iowa Acts, House File 2460.

[ARC 1665C, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

**701—307.7(422) ACE training program credits from withholding.** The accelerated career education (ACE) program is a training program administered by the Iowa department of economic development to provide technical training in state community colleges for employees in highly skilled jobs in the state to the extent that the training is authorized in an agreement between an employer or group of employers and a community college for the training of certain employees of the employer or group of employers. If a community college and an employer or group of employers enter into a program agreement for ACE training, a copy of the agreement is to be sent to the department of revenue. No costs incurred prior to the date of the signing between a community college and an employer or group of employers may be reimbursed or are eligible for program job credits, including job credits from withholding unless the costs are incurred on or after July 1, 2000.

**307.7(1)** The costs of the ACE training program may be paid from the following sources:

- a. Program job credits which the employer receives on the basis of the number of program job positions agreed to by the employer for the training program;
- b. Cash or in-kind contributions by the employer toward the costs of the program which must be at least 20 percent of the total cost of the program;

c. Tuition, student fees, or special charges fixed by the board of directors of the community college to defray costs of the program;

d. Guarantee by the employer of payments to be received under paragraphs “a” and “b” of this subrule.

This rule pertains only to the program job credits from withholding described in paragraph “a.”

**307.7(2)** ACE training programs financed by job credits from withholding. In situations when an employer or group of employers and a community college have entered into an agreement for training under the ACE program and the agreement provides that the training will be financed by credits from withholding, the amount of funding will be determined by the program job credits identified in the agreement. Eligibility for the program job credits is based on certification of program job positions and program job wages by the employer at the time established in the agreement with the community college. An amount of up to 10 percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total amount of Iowa income tax withheld by the employer. For example, if there were 20 employees designated to be trained in the agreement and their gross wages were \$600,000, the gross program job wage would be \$600,000. Therefore, 10 percent of the gross program job wage in this case would be \$60,000, and this amount would be credited against Iowa income tax which would ordinarily be withheld from the wages of all employees of the employer and remitted to the department of revenue on a quarterly basis. The amount credited against the withholding tax liability of the employer would be paid to the community college training the employer’s employees under the ACE program. The employer may take the credits against withholding tax on returns filed with the department of revenue until such time as the program costs of the ACE program are considered to be satisfied.

This rule is intended to implement Iowa Code sections 260G.4A and 422.16.

[Editorial change: IAC Supplement 11/2/22]

**701—307.8(260E) New job tax credit from withholding.** The Iowa industrial new jobs training program is a program administered by the economic development authority for projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industries. For employers that have entered into an agreement with a community college under Iowa Code chapter 260E, a credit equal to 1.5 percent of the wages paid by the employer to each employee covered by the agreement can be taken on the Iowa withholding tax return. If the amount of withholding by the employer is less than 1.5 percent of the wages paid to the employees covered by the agreement, the employer can take the remaining credit against Iowa tax withheld for other employees. An employee does not include a resident of Illinois who earns wages in Iowa since these employees are not subject to Iowa withholding tax in accordance with the Iowa-Illinois reciprocal tax agreement discussed in 701—subrule 300.13(1). The administrative rules for the Iowa industrial new jobs training program administered by the economic development authority may be found in 261—Chapter 5.

This rule is intended to implement Iowa Code section 260E.2 as amended by 2012 Iowa Acts, Senate File 2212, and section 260E.5.

[ARC 0337C, IAB 9/19/12, effective 10/24/12; Editorial change: IAC Supplement 11/2/22]

**701—307.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs.**

**307.9(1)** *Supplemental new jobs credit from withholding.* For eligible businesses approved by the economic development authority under Iowa Code section 15A.7, a credit equal to an additional 1.5 percent of the wages paid to employees in new jobs for these eligible businesses can be taken on the Iowa withholding tax return. This supplemental new jobs credit is in addition to the credit described in rule 701—307.8(260E). The administrative rules for the supplemental new jobs credit from withholding may be found in 261—paragraph 59.6(3)“a.”

**307.9(2)** *Alternative credit for housing assistance programs.* As an alternative to the credit described in subrule 307.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing

assistance program may be claimed on the Iowa withholding tax return for wages paid prior to July 1, 2009. Effective July 1, 2009, the alternative credit for housing assistance programs was repealed. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

This rule is intended to implement Iowa Code section 15A.7 and 2014 Iowa Code sections 15E.196 and 15E.197.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—307.10(403) Targeted jobs withholding tax credit.** For employers that enter into a withholding agreement with pilot project cities approved by the economic development authority and create or retain targeted jobs in a pilot project city, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the economic development authority may be found in 261—Chapter 71.

If the amount of withholding by the employer is less than 3 percent of the wages paid to the employees covered under the withholding agreement, the employer can take the remaining credit against Iowa tax withheld for other employees or may carry the credit forward for up to ten years or until depleted, whichever is the earlier.

If an employer also has a new job credit from withholding provided in rule 701—307.8(260E) or the supplemental new jobs credit from withholding provided in subrule 307.9(1), these credits shall be collected and disbursed prior to the collection and disbursement of the targeted jobs withholding tax credit.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Company A does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company A enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 4 percent of the wages paid. Company A will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement, since the targeted jobs withholding tax credit cannot exceed 3 percent.

EXAMPLE 2: Company B does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company B enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company B will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement. The extra withholding credit equal to 0.5 percent may be used to offset withholding tax for Company B's employees not covered under the withholding agreement.

EXAMPLE 3: Company C has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company C also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under these agreements is 5 percent of the wages paid. Company C will be allowed a credit on the Iowa withholding return equal to 5 percent of the wages paid to each employee covered under these agreements. Since the community college receives disbursement of the credit before the pilot project city, the community college will receive 3 percent of the wages paid to each employee covered under the agreements, and the pilot project city will receive the remaining 2 percent of the wages paid to each employee covered under the agreements.

EXAMPLE 4: Company D has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company D also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement,

and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company D will be allowed a credit on the Iowa withholding tax return equal to 6 percent of the wages paid to each employee covered under these agreements. The extra withholding credit equal to 3.5 percent may be used to offset withholding tax for Company D's employees not covered under these agreements.

**307.10(1) Notification by the employer.** Once a withholding agreement is entered into with a pilot project city, the employer shall notify the department of revenue that an agreement has been executed. With this notification, the employer must also provide its address, tax identification number and the number of new jobs created under the agreement. In addition, for each year that the withholding agreement is in place, the employer must notify the department of revenue by January 31 of the number of new jobs created as of December 31 of the preceding year.

**307.10(2) Notification by the pilot project city.** The pilot project city must notify the department of revenue on a quarterly basis of the amount of the targeted jobs withholding credit that each employer covered by a withholding agreement remitted to the city. This notification must occur within 45 days after the end of each calendar quarter. In addition, the pilot project city must notify the department of revenue immediately when a withholding agreement with an employer is terminated.

This rule is intended to implement Iowa Code section 403.19A as amended by 2013 Iowa Acts, Senate File 433.

[ARC 1138C, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22]

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CHAPTER 404  
COMPOSITE RETURNS FOR TAX YEARS BEGINNING PRIOR TO JANUARY 1, 2022  
[Prior to 11/2/22, see Revenue Department[701] Ch 48]

**701—404.1(422) Composite returns.** For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1987, a partnership, limited liability company, S corporation, or trust may be allowed or be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years of nonresident partners, members, shareholders, or beneficiaries which begin on or after January 1, 1999, a partnership, limited liability company, S corporation, or trust may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident partners, members, shareholders, or beneficiaries. For tax years beginning on or after January 1, 1995, professional athletic teams may be allowed or be required to file a composite return and pay the tax due on behalf of nonresident team members. For tax years beginning on or after January 1, 2008, nonresident trusts or estates which are partners, members, shareholders or beneficiaries in partnerships, limited liability companies, S corporations or estates or trusts may elect or may be required to file a composite return and pay the tax due on behalf of the nonresident trusts or estates.

This rule is intended to implement Iowa Code section 422.13 as amended by 2007 Iowa Acts, House File 923, section 15.

[Editorial change: IAC Supplement 11/2/22]

**701—404.2(422) Definitions.** For the purposes of this chapter:

“*Employee*” means a nonresident member of a professional athletic team as defined in subrule 701—40.46(1).

“*Partner*” includes a member of a limited liability company which is treated as a partnership for tax purposes.

“*Taxpayer*” means a partnership, limited liability company, S corporation, professional athletic team, or trust which files a return and pays the tax on behalf of the nonresident partners, members, shareholders, employees, beneficiaries, estates or trusts.

“*Tax year*” means the tax year of the partners, shareholders, employees, beneficiaries, estates or trusts included in the composite return.

This rule is intended to implement Iowa Code section 422.13.

[Editorial change: IAC Supplement 11/2/22]

**701—404.3(422) Filing requirements.** A composite return may be allowed or required to be filed based upon the following:

1. The composite return must include all nonresident partners, shareholders, employees, or beneficiaries unless the taxpayer can demonstrate which nonresident partners, shareholders, employees, or beneficiaries are filing separate income tax returns because the partner, shareholder, employee or beneficiary has Iowa source income other than that which may be reported on a separate composite return, or has elected to file an Iowa individual income tax return. Nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident has less than the minimum statutory filing amount. For example, for 2006 the minimum income from Iowa sources before a nonresident is required to file an Iowa individual income tax return is \$1,000 of income attributed to Iowa sources as determined by applying the allocation and apportionment provisions of 701—Chapter 54 to the nonresident’s prorated share of the entity’s income. In addition, nonresident partners, shareholders, employees, or beneficiaries shall not be included in a composite return if the nonresident does not have more income from Iowa sources than the amount of one standard deduction for a single taxpayer plus an amount of income necessary to create a tax liability at the effective tax rate on the composite return sufficient to offset one personal exemption. For example, for 2006 a standard deduction for a single individual is \$1,650 and at the maximum tax rate of 8.98 percent, \$445 of taxable income is required to offset the \$40 personal exemption. This equates to \$2,095 (\$445 plus \$1,650) of income attributable to Iowa sources that would be required to be included in a composite return. The

taxpayer must include a list of all nonresident partners, shareholders, employees, or beneficiaries who are filing separate income tax returns. The list must also include the address and social security number or federal identification number of the nonresident partners, shareholders, employees, or beneficiaries. Filing a composite return is an election which may not be withdrawn after the due date of the return (considering any extension of time to file), but the nonresidents may, as an individual or as a group, withdraw their election at any time prior to the due date (considering any extension of time to file).

2. Income of partners, shareholders, employees, or beneficiaries whose state of residence is not known by the taxpayer must be included in the composite return.

3. Income of partners in publicly traded limited partnerships held in street names by brokers must be included in the composite return unless the taxpayer can demonstrate that the partner is an Iowa resident.

4. A taxpayer who elects to file a composite return shall continue to file composite returns unless the taxpayer notifies the department in writing that the taxpayer wishes to discontinue filing composite returns. The notice shall be filed with the Iowa Department of Revenue, Examination Section, Compliance Division, P.O. Box 10456, Des Moines, Iowa 50306, before the due date of the return for the tax year for which the change in filing is to be made.

A taxpayer who was required to file a composite return for the immediately preceding taxable year is required to file a composite return unless permission is given to discontinue filing a composite return.

5. Each nonresident partner, shareholder, employee, or beneficiary whose income is included in the composite return must have the same tax year, which must be the tax year of the majority of the nonresident partners, shareholders, employees, or beneficiaries. Those nonresident partners, shareholders, employees, or beneficiaries who are not included in the composite return must file separate individual income tax returns.

This rule is intended to implement Iowa Code section 422.13.

[Editorial change: IAC Supplement 11/2/22]

**701—404.4** Reserved.

**701—404.5(422) Composite return required by director.** The director may in accordance with rule 701—48.3(422) require the filing of a composite return under the following conditions.

**404.5(1)** The director may require the filing of a composite return if the nonresident partners, shareholders, or beneficiaries do not file individual income tax returns and pay the tax due.

**404.5(2)** Where some of the nonresident partners, shareholders, or beneficiaries file individual income tax returns and pay the tax due, but other nonresident partners, shareholders, or beneficiaries do not file individual returns, the director may require a composite return which includes the Iowa taxable income of those nonresident partners, shareholders, or beneficiaries who did not file individual returns.

**404.5(3)** For tax years beginning on or after January 1, 2010, if it is determined that it is necessary for the efficient administration of Iowa individual income tax, the director may require the filing of a composite return for nonresidents other than nonresident partners, members, beneficiaries or shareholders in partnerships, limited liability companies, trusts or S corporations.

For example, the director may require a composite return in situations where nonresident real estate brokers or nonresident insurance agents who are independent contractors earn commission income from the sale of real estate in Iowa or from insurance policies sold to Iowa residents.

This rule is intended to implement Iowa Code section 422.13 as amended by 2009 Iowa Acts, Senate File 478, section 132.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; Editorial change: IAC Supplement 11/2/22]

**701—404.6(422) Determination of composite Iowa income.** Because a composite return is filed on behalf of the nonresident partners, shareholders, employees, or beneficiaries, it must be based upon the tax year of the majority of its partners, shareholders, employees, or beneficiaries. The composite return must be filed on Form IA 1040C, “Composite Iowa Individual Income Tax Return.” Attach schedules as necessary to explain the return. For the purposes of this rule, federal income means federal ordinary income (loss) from trade or business activities plus those items of income which flow through separately

less expense items which flow through separately to the partners, shareholders, or beneficiaries joining in the filing of a composite return.

1. Adjustments to federal income. For partnerships and trusts, make those adjustments to federal income set forth in Iowa Code section 422.7. For S corporations, make those adjustments to federal income set forth in Iowa Code section 422.35.

2. Apply the allocation and apportionment provisions of 701—Chapter 54 or rule 701—40.46(422) for allocation of compensation paid to nonresident employees of professional athletic teams.

3. Deduct one standard deduction equal to the amount allowed a single taxpayer, not to exceed the amount of income attributable to Iowa, for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

4. For tax years beginning on or after January 1, 1989, deduct an amount in lieu of a federal tax deduction based upon the following schedule.

0 — \$ 49,999	No deduction
\$ 50,000 — \$ 99,999	5% of net income attributable to Iowa
\$100,000 — \$199,999	10% of net income attributable to Iowa
\$200,000 and over	15% of net income attributable to Iowa

5. A net operating loss carryback or carryforward is allowed. See 701—subrule 40.18(3). In lieu of a net operating loss carryback, the taxpayer may elect to carry the loss forward.

This rule is intended to implement Iowa Code section 422.13.

[Editorial change: IAC Supplement 11/2/22]

**701—404.7(422) Determination of composite Iowa tax.**

**404.7(1)** The tax will be computed in accordance with Iowa Code section 422.5, including the alternative minimum tax as though a resident.

**404.7(2)** Deduct from the computed tax one personal exemption credit of \$20 (\$40 for tax years beginning on or after January 1, 1998) for each nonresident partner, shareholder, employee, or beneficiary included in the composite return.

EXAMPLE: For tax year 1991, X corporation is an S corporation, all of whose shareholders but one are nonresidents who have elected to join in the filing of a composite return. The three electing shareholders' share of income or loss is 87 percent of the corporation's total income. The S corporation's net income is \$800,000, and income items totaling \$6,000 and expenses of \$500,000 flow directly to the shareholders. The corporation has 25 percent of its sales with an Iowa destination. The corporation has tax preferences and adjustments of \$475,000. The composite tax liability would be computed as follows:

Net income attributable to electing shareholders \$800,000 × 87%	\$696,000
Add: electing shareholders' share of income items which flow separately to shareholders \$6,000 × 87%	5,220
Less: electing shareholders' share of expenses which flow separately to shareholders \$500,000 × 87%	<u>&lt;435,000&gt;</u>
Income attributable to electing shareholders	\$266,220
Times the Iowa business activity ratio	<u>25%</u>
Net income attributable to Iowa	\$ 66,555

Less: one standard deduction per shareholder 3 × \$1,280	< 3,840>
Federal tax deduction \$66,555 × 5%	<u>&lt; 3,328&gt;</u>
Iowa taxable income	\$ 59,387
Computed tax	\$ 4,515
Less: one personal exemption credit per shareholder 3 × \$20	<u>&lt; 60&gt;</u>
Iowa tax	<u>\$ 4,455</u>

The alternative minimum tax would be computed as follows:

Iowa taxable income	\$ 59,387
Add: tax preferences and adjustments attributable to electing shareholders times Iowa activity ratio \$475,000 × 87% × 25%	<u>103,313</u>
	\$162,700
Less: exemption	<u>35,000</u>
Minimum taxable income	\$127,700
times minimum tax rate 7.5%	<u>× .075</u>
Computed minimum tax	\$ 9,578
Less regular tax	<u>&lt; 4,455&gt;</u>
Minimum tax liability	<u>\$ 5,123</u>

This rule is intended to implement Iowa Code section 422.13.  
[ARC 1303C, IAB 2/5/14, effective 3/12/14; Editorial change: IAC Supplement 11/2/22]

**701—404.8(422) Estimated tax.** Taxpayers filing composite returns are not required to make payments of estimated tax. However, if taxpayers desire to make estimated payments, the estimated payments should be made on Form IA 1040ES using the partnership's, S corporation's, or trust's identification number assigned by the department in lieu of the social security number.

This rule is intended to implement Iowa Code section 422.13.  
[Editorial change: IAC Supplement 11/2/22]

**701—404.9(422) Time and place for filing.**

**404.9(1)** A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the tax year of the partners, shareholders, employees, beneficiaries, estates or trusts included in the composite return, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or

holiday, the composite return is due the following day that is not a Saturday, Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed, postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Composite Return Processing, Department of Revenue, P.O. Box 10469, Des Moines, Iowa 50306.

**404.9(2)** Extension of time for filing composite returns. If at least 90 percent of the tax required to be shown due has been paid by the due date and no return was filed by the due date, the director will consider that the taxpayer has requested an extension of time to file the return and will automatically grant an extension of up to six months to file the return. The taxpayer does not have to file an application for extension form with the department to get the automatic extension to file the return within the six-month period after the due date and not be subject to penalty. However, if the taxpayer wants to make a tax payment to ensure that at least 90 percent of the tax has been paid on or before the due date, the payment should be made with the Iowa Tax Voucher form. This form can be requested from the Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306, or by telephone at (515)281-3114.

To determine whether or not at least 90 percent of the tax was “paid” on or before the due date, the aggregate amount of tax credits applicable on the return, plus the tax payments made on or before the due date, are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax and minimum tax. The tax credits applicable are the credits set out in Iowa Code chapter 422, division II, and section 422.111.

If the aggregate of the tax credits and the tax payments are equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the “90 percent” test and no penalty will be assessed. However, the taxpayer will still be subject to statutory interest on any tax due when the return is filed.

Any tax elections, such as the election to carry forward a net operating loss occurring in the tax year, will be considered to be valid in instances when the return is filed within the six-month extended period after the due date. The fact that the taxpayer has paid less than 90 percent of the tax required to be shown due will not invalidate any tax elections made on the return, if the return is filed within the six-month extended period.

This rule is intended to implement Iowa Code section 422.13.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 6551C, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

#### **701—404.10(422) Repeal—transition rule.**

**404.10(1)** *In general.* Except as otherwise provided in subrule 404.10(2), this chapter has no application to any tax year of partners, members, shareholders, beneficiaries, or employees that begins on or after January 1, 2022. The department’s administrative rules on composite returns for any tax year of a partnership, limited liability company, S corporation, estate, or trust that begins on or after January 1, 2022, are located in 701—Chapter 405.

**404.10(2)** *Special rule for fiscal year filers in tax year 2021.* For the tax year of a partnership, limited liability company, S corporation, estate, or trust that begins in calendar year 2021 and ends in calendar year 2022, the entity may elect or be required to file a Form IA 1040C and pay tax under this chapter for income from that tax year that is reportable by nonresident partners, members, shareholders, or beneficiaries for their tax year beginning during calendar year 2022.

EXAMPLE: Partnership P is a fiscal year filer with a tax year that runs from July 1 to June 30. The majority of Partnership P’s partners are individuals who file on a calendar-year basis, thus P is required to file the Form IA 1040C on a calendar-year basis. Partnership P may elect or be required to file a Form IA 1040C to report the Iowa-source income earned by the eligible nonresident partners during Partnership P’s 2021 tax year that began on July 1, 2021, and ended on June 30, 2022.

This rule is intended to implement 2021 Iowa Acts, Senate File 608, division II.

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## CHAPTER 405

## COMPOSITE RETURNS FOR TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2022

**701—405.1(422) Composite returns.** For tax years beginning on or after January 1, 2022, a pass-through entity with one or more nonresident members for any period of time during the tax year shall file a composite return using the Iowa composite return (IA PTE-C) and pay Iowa income or franchise tax on behalf of all of its nonresident members, unless an exception in rule 701—405.5(422) applies. The IA 1040C, used to file composite returns under the former composite return law in tax years beginning before January 1, 2022, has been discontinued for tax years beginning on or after that date, except as provided in 701—subrule 404.10(2). Rules related to the former composite return law are located in 701—Chapter 404.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—405.2(422) Definitions.** Unless otherwise indicated in this rule or required by the context, all words and phrases used in this chapter that are defined under Iowa Code section 422.16B shall have the same meaning as provided to them under that Iowa Code section. For the purposes of this chapter:

“*Composite return*” means the IA PTE-C Iowa composite return, which reports information about the Iowa-source income or other amounts credited or paid to each nonresident member of the pass-through entity, the amount of composite return tax due on behalf of each nonresident member of the pass-through entity, and such other information as the department may require.

“*Composite return tax*” means the Iowa income tax or franchise tax due by a pass-through entity on behalf of the pass-through entity’s nonresident members.

“*Department*” means the department of revenue.

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

“*Tax year*” means the tax year of the pass-through entity filing the composite return.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—405.3(422) Filing and payment for pass-through entities.**

**405.3(1) Filing requirement.** A pass-through entity that is required to file an Iowa partnership return (IA 1065), Iowa income tax return for S corporations (IA 1120S), or Iowa fiduciary return (IA 1041) and that has one or more nonresident members for any period of time during the tax year is required to file a composite return unless it meets the conditions for an exception outlined in subrule 405.5(1).

*a.* A pass-through entity with nonresident members must file a composite return and pay composite return tax on behalf of all nonresident members, except for the nonresident members the pass-through entity can demonstrate are exempt from the composite return requirement pursuant to subrule 405.5(2) or that have elected out of the composite return requirement pursuant to rule 701—405.6(422).

*b.* A pass-through entity must report all of its nonresident members, including nonresident members who are exempt from or who elect out of the composite return requirement, even though the pass-through entity is not required to pay composite return tax on behalf of those nonresident members. If all nonresident members are exempt from or elect out of the composite return requirement, the pass-through entity shall file a composite return reporting required information about all of its nonresident members and showing no composite return tax due.

*c.* Any pass-through entity required to file its Iowa partnership return (IA 1065), Iowa income tax return for S corporations (IA 1120S), or Iowa fiduciary return (IA 1041) for a tax year in an electronic format under Iowa Code section 422.14, 422.15, or 422.36 shall also be required to file its composite return for that tax year in an electronic format. Rule 701—8.7(422) contains more information about mandatory electronic filing requirements.

*d.* The composite return may be filed electronically by way of the Internal Revenue Service Modernized e-File (MeF) program, also known as federal/state electronic filing; mailed to Income Tax Return Processing, Iowa Department of Revenue, P.O. Box 9187, Des Moines, Iowa 50306-9187; or

hand-delivered to the department's office in the Hoover State Office Building, First Floor, 1305 East Walnut Street, Des Moines, Iowa 50319.

**405.3(2) *Due date of composite return—automatic extensions.*** The composite return is due and must be filed on or before the due date of the pass-through entity's Iowa partnership return (IA 1065), Iowa income tax return for S corporations (IA 1120S), or fiduciary return (IA 1041), whichever is applicable. If the pass-through entity qualifies for and receives an extension to file its Iowa income tax return, it will also automatically qualify for and receive the same period of extension to file its composite return. Any composite return filed after the due date, including extensions, may be subject to the penalty for failure to timely file a return pursuant to rules 701—10.6(421) and 701—10.9(421) and subject to other applicable penalties provided by law.

**405.3(3) *Due date of composite return tax.*** The composite return tax is due by the original due date of the pass-through entity's Iowa partnership return (IA 1065), Iowa income tax return for S corporations (IA 1120S), or fiduciary return (IA 1041), whichever is applicable. The filing extension described in subrule 405.3(2) does not extend the due date for paying the composite return tax. Any unpaid composite return tax is subject to interest computed from the original due date of the pass-through entity's applicable income tax return. The pass-through entity may also be subject to the penalty for failure to timely pay tax due pursuant to rule 701—10.6(421) and other applicable penalties provided by law.

**405.3(4) *Payment of estimated composite return tax not required.*** Pass-through entities are not required under Iowa law to make payments of estimated composite return tax. However, if a pass-through entity desires to make an estimated or other advance payment of composite return tax liability, the pass-through entity may do so electronically on GovConnectIowa or by sending a check with a voucher available on GovConnectIowa.

**405.3(5) *Amended composite returns—refund limitation.***

*a.* If the pass-through entity becomes aware that information was erroneously stated on the composite return, including but not limited to information about the nonresident members, Iowa-source income, or composite return tax due, the pass-through entity shall file an amended composite return, except as otherwise provided in this subrule.

*b.* If after filing an initial composite return for a tax year the pass-through entity is required to amend its Iowa income tax return in a manner that increases the amount of composite return tax due, or the pass-through entity discovers that nonresident members were erroneously excluded from the composite return, the pass-through entity shall file an amended composite return and pay the additional composite return tax that is due. Any additional composite return tax payment determined to be due after the filing of the initial composite return shall be made by the pass-through entity. An amended composite return and additional composite return tax payment is not required if the return changes are from a centralized partnership audit or an Iowa pass-through entity audit and included in a pass-through entity's election to pay on its owners' behalf pursuant to Iowa Code section 422.25A(5).

*c.* If after filing an initial composite return for a tax year the pass-through entity is required to amend its Iowa income tax return in a manner that only decreases the amount of Iowa-source income reportable to one or more nonresident owners, the pass-through entity is not required to file an amended composite return. A pass-through entity may not request a refund of composite return tax paid on behalf of a nonresident member after the initial composite tax return has been filed. When composite return tax is paid by a pass-through entity on behalf of a nonresident member, it is then treated as paid by the nonresident member and any refund of an overpayment may only be requested by the nonresident member on that nonresident member's own income, franchise, or composite return.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—405.4(422) Nonresident member determination.** The following rules shall apply in determining who is a nonresident member under Iowa Code section 422.16B(1) "a":

**405.4(1)** A partner, shareholder, or beneficiary of a pass-through entity shall be considered a nonresident member if any of the following were true for the entire period of time that person was a partner, shareholder, or beneficiary during that pass-through entity's tax year:

- a. The person is an individual and was a nonresident of Iowa.
- b. The person is a business entity and did not have a commercial domicile in Iowa as defined in Iowa Code section 422.32.
- c. The person is an estate or trust and did not have a situs in Iowa.

**405.4(2)** Any partner, shareholder, or beneficiary whose state of residence, commercial domicile, or situs, as applicable, is not known by the pass-through entity shall be considered a nonresident member.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—405.5(422) Exceptions to the composite return requirement.**

**405.5(1)** *Filing and payment exceptions for pass-through entities.* Pass-through entities are not required to file a composite return or pay composite return tax if the entity meets any of the following conditions for the tax year:

- a. The pass-through entity is a publicly traded partnership that meets the requirements of Iowa Code section 422.16B(5) “a.”
- b. The pass-through entity is engaged in disaster or emergency-related work during a disaster response period and is not required to file a composite return as provided in Iowa Code section 29C.24.
- c. The pass-through entity is prohibited under federal or state law from making distributions to members. This exception applies only for years in which distributions are prohibited under federal or state law. Contractual restrictions on distributions, such as loan covenants or organization documents, do not qualify an entity for this exception.
- d. None of the pass-through entity’s nonresident members have a positive amount of Iowa-source income from the pass-through entity. This exception does not apply if any nonresident member has a positive amount of Iowa-source income from the pass-through entity, even if the nonresident member has elected out of the composite return pursuant to rule 701—405.6(422) and no composite return tax is due.

e. Only for tax years beginning during calendar year 2022, the pass-through entity meets one of the following requirements:

(1) The pass-through entity is a financial institution subject to the franchise tax under Iowa Code section 422.60 and files an Iowa franchise return for financial institutions (IA 1120F) required under Iowa Code section 422.62 and pays any franchise tax shown due on that return.

(2) The pass-through entity wholly owns one or more financial institutions subject to the franchise tax under Iowa Code section 422.60 that are treated as disregarded entities for federal and Iowa income tax purposes, substantially all (at least 90 percent) of the pass-through entity’s gross income for the tax year is also reportable income on those wholly owned financial institutions’ Iowa franchise return for financial institutions (IA 1120F) required under Iowa Code section 422.62, and those wholly owned financial institutions file their Iowa franchise return for financial institutions (IA 1120F) and pay any franchise tax shown due on that return.

This exception does not apply to any pass-through entity for any tax year beginning on or after January 1, 2023.

**405.5(2)** *Payment exceptions for nonresident members.* A pass-through entity is not required to pay composite return tax on behalf of a particular nonresident member if that nonresident member meets any of the following conditions for the tax year:

- a. The nonresident member is a publicly traded partnership that meets the requirements of Iowa Code section 422.16B(5) “a.”
- b. The nonresident member is exempt from Iowa income tax under Iowa Code section 422.34(2), unless the Iowa-source income of the tax-exempt entity is unrelated business income.
- c. The nonresident member is an insurance company exempt from Iowa income tax under Iowa Code section 422.34(1) and instead subject to the insurance companies tax under Iowa Code section 432.1, 432.2, 432A.1, 518.18, or 518A.35.

d. The nonresident member and the pass-through entity complete and sign the Nonresident Member Composite Agreement form for the tax year as described in rule 701—405.6(422).

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—405.6(422) Election out of the composite return tax requirement.**

**405.6(1)** *In general.* A nonresident member may elect to be excluded from a pass-through entity's composite return unless prohibited from doing so by the department under subrule 405.6(2). Electing out of the composite return only relieves the pass-through entity of the requirement to pay composite return tax on behalf of that nonresident member. It does not relieve the pass-through entity of the requirement to report that nonresident member on a composite return. For a nonresident member to be excluded from the composite return tax payment, both the nonresident member and the pass-through entity must complete and sign the Nonresident Member Composite Agreement, available on the department's website. The Nonresident Member Composite Agreement must be completed and signed by all parties prior to the pass-through entity's composite return due date, including extensions. The Nonresident Member Composite Agreement is only valid for the tax year for which it is executed. The nonresident member and the pass-through entity must complete and sign a separate Nonresident Member Composite Agreement for each tax year in which the nonresident member seeks to be excluded from the composite return.

**405.6(2)** *Circumstances in which a pass-through entity or nonresident member may not elect out of the composite return requirement.*

a. The ability to elect out of the composite return is conditionally granted by the department based on the nonresident member's promise to comply with the filing and payment requirements listed in subrule 405.6(3) and the pass-through entity's compliance with Iowa tax law.

b. If information available to the department indicates that the pass-through entity has not complied with Iowa tax law, including but not limited to properly reporting or sourcing its income or other tax items within and without Iowa, the department may revoke the pass-through entity's ability to enter into a Nonresident Member Composite Agreement with its nonresident members.

c. If information available to the department indicates that a nonresident member has not complied with the filing and payment requirements listed in subrule 405.6(3), the department may revoke the pass-through entity's ability to enter into a Nonresident Member Composite Agreement with that particular nonresident member.

d. The pass-through entity will be notified in writing of a revocation under paragraph 405.6(2) "b" or "c," and such revocation will take effect 30 days following the date on the revocation letter. The revocation will not affect any Nonresident Member Composite Agreement entered into prior to the effective date of the revocation. After such revocation, a pass-through entity will not be allowed to enter into a Nonresident Member Composite Agreement with the affected nonresident members without written permission from the department.

**405.6(3)** *Filing and payment requirements for a nonresident member electing out of composite return requirement.* To elect out of the composite return requirement, a nonresident member must agree to all of the following in the Nonresident Member Composite Agreement:

a. The nonresident member shall file an Iowa income or franchise tax return, unless such return is subject to a filing threshold and the nonresident member falls below that threshold and is not required to file.

b. The nonresident member shall timely pay all Iowa income or franchise tax related to the nonresident member's distributive share of Iowa-source income from the pass-through entity, including, if applicable, estimated tax payments and composite return tax payments.

c. The nonresident member shall acknowledge that the nonresident member is subject to personal jurisdiction in Iowa for the collection of Iowa income or franchise tax liability.

**405.6(4)** *Retention of records.* The signed Nonresident Member Composite Agreement is not required to be submitted with the composite return but shall be retained by the pass-through entity and submitted to the department upon request.

**405.6(5)** *Liability for unpaid tax, penalty, and interest for a nonresident member electing out of the composite return requirement.* A pass-through entity that enters into a Nonresident Member Composite Agreement with a nonresident member will remain jointly and severally liable for any unpaid composite return tax, penalty, and interest attributable to the electing nonresident member's distributive share of Iowa-source income from the pass-through entity. If the department determines that a nonresident member has failed to comply with the tax filing and payment requirements agreed to in subrule 405.6(3), it may collect the unpaid composite return tax, penalty, and interest directly from the pass-through entity.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

#### **701—405.7(422) Determination of composite return tax.**

**405.7(1)** Each nonresident member's distributive share of Iowa-source income from the pass-through entity shall be determined at the entity level in accordance with the Iowa statutes, administrative rules, and tax forms applicable to the pass-through entity's tax type, including provisions related to the allocation and apportionment of income.

**405.7(2)** A partner's Iowa-source income includes the amount of nonseparately stated income, separately stated income including guaranteed payments, and separately stated deductions, attributable to Iowa as properly reported on the partner's IA 1065 Schedule K-1. A shareholder's Iowa-source income includes the amount of nonseparately stated income, separately stated income, and separately stated deductions, attributable to Iowa as properly reported on the shareholder's IA 1120S Schedule K-1. A beneficiary's Iowa-source income includes the amount of distributable net income attributable to Iowa as properly reported on the beneficiary's IA 1041 Schedule K-1.

**405.7(3)** No net operating loss or other owner-level tax attribute modification, or reduction for Iowa tax credits, is allowed in the computation of each nonresident member's Iowa-source income for purposes of the composite return. To claim an owner-level tax attribute modification, or an Iowa tax credit, the nonresident member must file the nonresident member's own Iowa tax return.

**405.7(4)** If a nonresident member's Iowa-source income is a loss, that loss cannot be netted against the Iowa-source income of another nonresident member.

**405.7(5)** The composite return tax for each nonresident member is computed by multiplying the nonresident member's Iowa-source income, if positive, by the highest tax rate applicable to that nonresident member. C corporations, or tax-exempt entities with unrelated business income, will be taxed at the highest corporate tax rate in Iowa Code section 422.33. Financial institutions will be taxed at the franchise tax rate in Iowa Code section 422.63. Individuals, estates, trusts, partnerships, and S corporations (except those subject to the franchise tax) will be taxed at the highest individual tax rate in Iowa Code section 422.5A. The sum of the composite return tax for all nonresident members is the pass-through entity's total composite return tax liability.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

#### **701—405.8(422) Filing for nonresident members—composite tax credits.**

**405.8(1)** *In general.* Nonresident members included on a pass-through entity's composite return may still have an Iowa return filing requirement. The nonresident member shall receive a refundable composite tax credit for the composite return tax paid on the nonresident member's behalf by the pass-through entity. The nonresident member's composite tax credit shall be claimed for the same tax year that the nonresident member's Iowa-source income from the pass-through entity is required to be reported on the nonresident member's Iowa income or franchise return.

**405.8(2)** *Nonresident member—partnership.* A nonresident member that is a partnership is required to file the Iowa partnership return (IA 1065). The partnership is also subject to the composite return requirements if it has one or more nonresident members for any period of time during the tax year or if it desires to claim a composite tax credit it received from another pass-through entity. The partnership shall claim its composite tax credit on its composite return. Subrule 405.8(4) contains information related to financial institutions organized as pass-through entities.

**405.8(3) Nonresident member—S corporation.** A nonresident member that is an S corporation is required to file the Iowa income tax return for S corporations (IA 1120S). The S corporation is also subject to the composite return requirements if it has one or more nonresident members for any period of time during the tax year or if it desires to claim a composite tax credit it received from another pass-through entity. The S corporation shall claim its composite tax credit on its composite return. Subrule 405.8(4) contains information related to financial institutions organized as pass-through entities.

**405.8(4) Nonresident member—financial institution.**

*a.* A nonresident member that is a financial institution as defined in Iowa Code section 422.61 is required to file the Iowa franchise return for financial institutions (IA 1120F). The financial institution shall claim its composite tax credit on its Iowa franchise return for financial institutions (IA 1120F).

*b.* If the nonresident financial institution is organized as a pass-through entity, it is also required to file the Iowa partnership return (IA 1065) or the Iowa income tax return for S corporations (IA 1120S), as applicable, and is subject to the composite return requirements if it has one or more nonresident members for any period of time during the tax year. In such instances, the financial institution may claim its composite tax credit on its Iowa franchise return for financial institutions (IA 1120F) or its composite return.

**405.8(5) Nonresident members—C corporation or tax-exempt entity.** A nonresident member that is a C corporation, or a tax-exempt entity with unrelated business income, is required to file the Iowa corporation income tax return (IA 1120). The entity shall claim its composite tax credit on its Iowa corporation income tax return (IA 1120).

**405.8(6) Nonresident member—estate or trust.** A nonresident member that is an estate or trust is required to file the Iowa fiduciary return (IA 1041) unless the estate's or trust's taxable income is below the Iowa return filing threshold in Iowa Code section 422.14. The estate or trust is also subject to the composite return requirement if its taxable income is above the Iowa return filing threshold in Iowa Code section 422.14 and if it has one or more nonresident members for any period of time during the tax year. The estate or trust may claim its composite tax credit on its Iowa fiduciary return (IA 1041) or its composite return.

**405.8(7) Nonresident members—individuals.** A nonresident member that is an individual is required to file the Iowa individual income tax return (IA 1040) unless the individual's income is below the Iowa return filing threshold in Iowa Code section 422.13, or unless the individual's distributive share of pass-through entity income included on one or more composite returns is the individual's only Iowa-source income. The individual shall claim the composite tax credit on the individual's Iowa individual income tax return (IA 1040).

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

### **701—405.9(422) Composite returns for nonresidents who are not members of a pass-through entity.**

**405.9(1)** The department may require that a composite return be filed under this chapter for nonresidents who are not members of a pass-through entity. The requirement may be set forth in this chapter for a category of persons or may be made directly in writing by the department to a specific person.

**405.9(2)** If a person who is not required to file a composite return under this chapter desires to do so for a group of nonresidents, the person shall request and receive permission from the department before filing the composite return. In order to be a valid request, the request must be in writing and must include sufficient information about the person making the request, the nonresidents to be included in the composite return, and the reason for filing on a composite return basis to enable the department to evaluate the request and make a determination. Once a valid request is received, the department may request additional information. Written requests shall be mailed to Policy Bureau, Research and Policy Division, Iowa Department of Revenue, P.O. Box 14467, Des Moines, Iowa 50306-3467.

This rule is intended to implement Iowa Code section 422.16B.  
[ARC 6900C, IAB 2/22/23, effective 3/29/23]

[Filed ARC 6900C (Notice ARC 6746C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]



CHAPTERS 406 to 499  
Reserved



CHAPTER 501  
FILING RETURNS, PAYMENT OF TAX,  
PENALTY AND INTEREST, AND TAX CREDITS

[Prior to 12/17/86, Revenue Department[730]]  
[Prior to 11/2/22, see Revenue Department[701] Ch 52]

**701—501.1(422) Who must file.** Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

Political organizations described in Internal Revenue Code Section 527 which are domiciled in this state and are required to file federal Form 1120POL and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

Homeowners associations described in Internal Revenue Code Section 528 which are domiciled in this state and are required to file federal Form 1120H and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

**501.1(1) Definitions.**

*a. Doing business.* The term “doing business” is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

*b. Representative.* A person may be considered a representative even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

*c. Tangible property having a situs within this state.* The term “tangible property having a situs within this state” means that tangible property owned or used by a foreign corporation is habitually present in Iowa or it maintains a fixed and regular route through Iowa sufficient so that Iowa could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S.Ct. 714, 50 L.Ed. 1155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

*d. Intangible property located or having a situs within Iowa.* Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler*

*v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico*, 131 P. 3d 27 (N.M. Ct. App. 2001), rev'd on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.*, 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson*, 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation*, 879 A.2d 1234 (N.J.Super.A.D. 2005), aff'd, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S.Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission*, 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm'r*, 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue*, 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue*, 899 N.E.2d 87 (Mass. 2009); *KFC Corporation v. Iowa Department of Revenue*, 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S. Ct. 97 (October 3, 2011). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

**501.1(2) Corporate activities not creating taxability.** Public Law 86-272, 15 U.S.C.A., Sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and, if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate, or intangibles in more than one state or to domestic corporations. For example, Public Law 86-272 does not extend to brokers or manufacturers' representatives or other persons or entities selling products for another person or entity.

*a.* If the only activities in Iowa of a foreign corporation selling tangible personal property are those of the type described in the noninclusive listing below, the corporation is protected from the Iowa corporation income tax law by Public Law 86-272.

(1) The free distribution by salespersons of product samples, brochures, and catalogues which explain the use of or laud the product, or both.

(2) The lease or ownership of motor vehicles for use by salespersons in soliciting orders.

(3) Salespersons' negotiation of a price for a product, subject to approval or rejection outside the taxing state of such negotiated price and solicited order.

(4) Demonstration by salesperson, prior to the sale, of how the corporation's product works.

(5) The placement of advertising in newspapers, radio, and television.

(6) Delivery of goods to customers by foreign corporation in its own or leased vehicles from a point outside the taxing state. Delivery does not include nonimmune activities, such as picking up damaged goods.

(7) Collection of state or local-option sales taxes or state use taxes from customers.

(8) Audit of inventory levels by salespersons to determine if corporation's customer needs more inventory.

(9) Recruitment, training, evaluation, and management of salespersons pertaining to solicitation of orders.

(10) Salespersons' intervention/mediation in credit disputes between customers and non-Iowa located corporate departments.

(11) Use of hotel rooms and homes for sales-related meetings pertaining to solicitation of orders.

(12) Salespersons' assistance to wholesalers in obtaining suitable displays for products at retail stores.

- (13) Salespersons' furnishing of display racks to retailers.
- (14) Salespersons' advice to retailers on the art of displaying goods to the public.
- (15) Rental of hotel rooms for short-term display of products.
- (16) Mere forwarding of customer questions, concerns, or problems by salespersons to non-Iowa locations.

*b.* For tax years beginning on or after January 1, 1996, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state are one or more of the following activities:

- (1) Holding meetings of the board of directors or shareholders, or holiday parties, or employee appreciation dinners.
- (2) Maintaining bank accounts.
- (3) Borrowing money, with or without security.
- (4) Utilizing Iowa courts for litigation.
- (5) Owning and controlling a subsidiary corporation which is incorporated in or which is transacting business within this state where the holding or parent company has no physical presence in the state as that presence relates to the ownership or control of the subsidiary.
- (6) Recruiting personnel where hiring occurs outside the state.

*c.* For tax years beginning on or after January 1, 1997, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state, in addition to the activities listed in paragraph "b" above, are training its employees or educating its employees, or using facilities in this state for this purpose.

*d.* For tax years beginning on or after January 1, 2006, a foreign corporation will not be considered to be doing business in Iowa or deriving income from sources within Iowa if its only activities within Iowa, in addition to the activities listed in paragraphs "b" and "c" of this subrule, are utilizing a distribution facility in Iowa, owning or leasing property at a distribution facility in Iowa, or selling property shipped or distributed from a distribution facility in Iowa.

A distribution facility is an establishment at which shipments of tangible personal property are processed for delivery to customers. A distribution facility does not include an establishment at which retail sales of tangible personal property or returns of such property are undertaken with respect to retail customers more than 12 days in a year. However, an exception to the 12-day requirement is allowed for distribution facilities that process customer orders by mail, telephone, or electronic means, if the distribution facility also processes shipments of tangible personal property to customers, as long as no more than 10 percent of the goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores its inventory of books at a facility in Iowa. The facility processes orders for these books solely by mail, telephone and the Internet on behalf of A, and customers are not allowed to purchase books at the facility's site in Iowa. The facility processes shipments of these books, and 5 percent of the books at this facility are delivered to purchasers located in Iowa. A does not conduct any other business activities in Iowa. A is not considered to be doing business in Iowa because less than 10 percent of the books at the facility are delivered to an Iowa customer.

EXAMPLE 2: B, a foreign corporation, stores its inventory of compact disks at a facility in Iowa. The facility processes orders for these compact disks solely by mail, telephone and the Internet on behalf of B, and customers are not allowed to purchase compact disks at the facility's site in Iowa. The facility processes shipments of these compact disks, and 15 percent of the compact disks at the facility are delivered to purchasers located in Iowa. B does not conduct any other business activities in Iowa. B is considered to be doing business in Iowa because more than 10 percent of the compact disks at the facility are delivered to an Iowa customer.

EXAMPLE 3: C, a foreign corporation, stores its inventory of doors and windows at a facility in Iowa. The facility processes orders for these windows and doors solely by mail, telephone and the Internet, and customers are not allowed to purchase these windows and doors at the facility's site in Iowa. The facility processes shipments of these windows and doors, and 7 percent of the windows and doors are delivered to purchasers located in Iowa. C will also install these windows and doors in Iowa upon customer request.

C is considered to be doing business in Iowa even though less than 10 percent of the windows and doors are delivered to Iowa customers because C is also conducting installation activities in Iowa which are not protected under Public Law 86-272.

EXAMPLE 4: D, a foreign corporation, stores its inventory of home decorating and craft kits at a facility in Iowa. The facility does not process any customer orders by mail, telephone or the Internet, and does not process any shipments of these kits directly to customers. D allows customers to come to the facility 14 days each year to directly purchase these kits, and customers must arrange for their own delivery of the kits. D is considered to be doing business in Iowa because sales to retail customers are conducted more than 12 days in a year, and the facility does not process customer orders or shipments to customers.

**501.1(3) Corporate activities creating taxability.** “Solicitation of orders” within Public Law 86-272 is limited to those activities which explicitly or implicitly propose a sale or which are entirely ancillary to requests for purchases. Activities that are entirely ancillary to requests for purchases are ones that serve no independent business function apart from their connection to the soliciting of orders. An activity that is not ancillary to requests for purchases is one that a corporation (taxpayer) has a reason to do anyway whether or not it chooses to allocate it to its sales force operating in Iowa (such as repair, installation, service-type activities, or collection on accounts). Activities that take place after a sale ordinarily will not be entirely ancillary to a request for purchases and, therefore, ordinarily will not be considered in “solicitation of orders.” *Wisconsin Department of Revenue v. William Wrigley, Jr. Company*, 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992).

De minimis activities which are not “solicitation of orders” are protected under Public Law 86-272. Whether in-state nonsolicitation activities are sufficiently de minimis to avoid loss of tax immunity depends upon whether those activities establish only a trivial additional connection with the taxing state. Whether a corporation’s nonsolicitation in-state activities are de minimis should not be decided solely by the quantity of one type of such activity but, rather, all types of nonsolicitation activities of the taxpayer should be considered in their totality. *Wisconsin v. Wrigley*, 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992). Frequency of the activity may be relevant, but an isolated activity is not invariably trivial. The mere fact that an activity involves small amounts of money or property does not invariably mean it is trivial.

If a foreign corporation has greater than a de minimis amount of Iowa nonsolicitation activity which includes activity of the types described in the noninclusive listing below, whether done by the salesperson, other employee, or other representative, it is not immunized from the Iowa corporation income tax by Public Law 86-272.

- a. Installation or assembly of the corporate product.
- b. Ownership or lease of real estate by corporation.
- c. Solicitation of orders for, or sale of, services or real estate.
- d. Sale of tangible personal property (as opposed to solicitation of orders) or performance of services within Iowa.
- e. Maintenance of a stock of inventory.
- f. Existence of an office or other business location.
- g. Managerial activities pertaining to nonsolicitation activities.
- h. Collections on regular or delinquent accounts.
- i. Technical assistance and training given after the sale to purchaser and user of corporate products.
- j. The repair or replacement of faulty or damaged goods.
- k. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.
- l. Rectification of or assistance in rectifying any product complaints, shipping complaints, etc., if more is involved than relaying complaints to a non-Iowa location.
- m. Delivery of corporate merchandise inventory to corporation’s distributors or dealers on consignment.
- n. Maintenance of personal property which is not related to solicitation of orders.

- o. Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.
- p. Inspection or verification of faulty or damaged goods.
- q. Inspection of the customer's installation of the corporate product.
- r. Research.
- s. Salespersons' use of part of their homes or other places as an office if the corporation pays for such use.
- t. The use of samples for replacement or sale; storage of such samples at home or in rented space.
- u. Removal of old or defective products.
- v. Verification of the destruction of damaged merchandise.
- w. Independent contractors, agents, brokers, representatives and other individuals or entities who act on behalf of or at the direction of the corporation (taxpayer) and who do non-de minimis amounts of nonsolicitation activities remove the corporation from the protection of Public Law 86-272. However, the maintenance of an office in Iowa or the making of sales in Iowa by independent contractors does not remove the corporation from the protection of Public Law 86-272. The term "independent contractors" means commission agents, brokers, or other independent contractors who are engaged in selling or soliciting orders for the sale of tangible personal property or perform other services for more than one principal and who hold themselves out as such in the regular course of their business activities. If a person is subject to the direct control of the foreign corporation that person may not qualify as an independent contractor.

**501.1(4)** *Taxation of corporations having only intangible property located or having a situs in Iowa.* For tax years beginning on or after January 1, 1995, corporations whose only connection with Iowa is their ownership of intangible property located or having a situs in Iowa are subject to Iowa income tax and must file an Iowa income tax return. Intangible property is located or has a situs in Iowa if the corporation's commercial domicile is in Iowa and the intangible property has not become an integral part of some business activity occurring regularly within or without Iowa. Regardless whether the corporation's commercial domicile is in or out of Iowa, intangible property is located or has a situs in Iowa if the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Arizona Tractor Company v. Arizona State Tax Commission*, 115 Ariz. 602, 566 P.2d 1348 (Ariz. App. 1977); *KFC Corporation v. Iowa Department of Revenue*, 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S.Ct. 97 (October 3, 2011). In the event that the intangible property interest is a general or limited partnership interest, the location or situs of that partnership interest is the place(s) where the partnership conducts business. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a corporation with a commercial domicile in State X, has a limited partnership interest in a partnership which does a regular business in Iowa. A has no physical presence in Iowa and has no other contact with Iowa. A's interest in the limited partnership is intangible personal property. A is required to file an Iowa income tax return because A's intangible personal property limited partnership interest has a business situs in Iowa. *Arizona Tractor Company v. Arizona State Tax Commission*, supra.

EXAMPLE 2: B, a corporation with a commercial domicile in State X, owns stock in a subsidiary corporation doing business regularly in Iowa. B has no physical presence in Iowa and has no other contact with Iowa. B controls the subsidiary and has a unitary relationship with it. B pledged the subsidiary stock to secure a line of credit from a bank and used the loaned funds in B's business. Under these circumstances, the subsidiary stock is not an integral part of the subsidiary's business and, therefore, the stock does not have a location or situs in Iowa. Accordingly, B is not required to file an Iowa income tax return as a result of any dividends received by B or capital gains received by B from the sale of the stock. *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988).

EXAMPLE 3: C, a corporation with a commercial domicile in State X, owns trademarks and trade names which it, by license agreements, allows other corporations to use. Some of those other corporations do business in Iowa. The trademarks and trade names are used by these other corporations

at their Iowa stores in connection with their business activities at those stores. C has no physical presence in Iowa and has no other contact with Iowa. C is paid royalties of 1 percent of net sales of the licensed products or services. C is required to file an Iowa income tax return because C's intangible property interests in the trademarks and trade names have situs in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993).

EXAMPLE 4: D, a corporation with a commercial domicile in Iowa, is a holding company which does not sell any tangible personal property or sell any business service but which does own the stock of five subsidiaries, all of which do business outside of Iowa. D has no physical presence outside of Iowa and has no other contact outside of Iowa. D has a unitary relationship with each subsidiary. Under these circumstances, the stock is not an integral part of each subsidiary's business so the stock does not have a location or situs outside of Iowa. The location or situs of the stock is in Iowa because D's commercial domicile is in Iowa. Accordingly, all of the dividends from the stock paid to D and any capital gains incurred as a result of D's sale of the stock are wholly taxed by Iowa.

EXAMPLE 5: E, a corporation with a commercial domicile in Iowa, owns trademarks and trade names which it, by license agreements, allows other corporations, located outside of Iowa, to use. The trademarks and trade names are used by these other corporations at their non-Iowa stores in connection with their business activities at those stores. E has no physical presence outside of Iowa and has no other contact outside of Iowa. E has business activities in Iowa. The fees and royalties paid to E are part of E's unitary business income. Under these circumstances, E is entitled to apportion its net income within and without Iowa because E's intangible property interests in the trademarks and trade names have situs outside of Iowa and E has business activities in Iowa.

EXAMPLE 6: F, a corporation with a commercial domicile in State X, owns all of the stock of a subsidiary corporation doing business in Iowa. F has no physical presence in Iowa and no other contact with Iowa. F loans funds to the subsidiary which the subsidiary uses in its Iowa business. Under these circumstances, the interest-bearing asset is not an integral part of the subsidiary's business and, therefore, that intangible asset does not have a location or situs in Iowa. Accordingly, F is not required to file an Iowa income tax return. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed.131, 51 S.Ct. 54 (1930).

EXAMPLE 7: G, a corporation with a commercial domicile in State X, earns fees from the licensing of custom computer software. G has no physical presence in Iowa and no other contact with Iowa. G licenses the software to other corporations which do business in Iowa and which use the software in that business in Iowa. Under these circumstances, regardless whether the fees constitute royalties or something else, the license fees are earned from intangible personal property with a location or situs in Iowa. Accordingly, G is required to file an Iowa income tax return.

EXAMPLE 8: H, a corporation with a commercial domicile in State X, has no physical presence in Iowa. H has entered into a contract with an independent contractor to solicit sales of H's magazines in Iowa. The independent contractor does business in Iowa and receives payment for the magazines and deposits the funds in an Iowa bank for H's account. H earns interest on this account. Under these circumstances which are H's only contact with Iowa, H's interest-bearing account is an integral part of business activity in Iowa. Accordingly, H is required to file an Iowa income tax return and include the interest income in the numerator of the business activity formula.

EXAMPLE 9: J, a corporation with a commercial domicile in State X, earns income from mortgages that the corporation has purchased. J has no physical presence in Iowa and no other contact with Iowa. J earns interest income from the mortgages on property located in Iowa. Under these circumstances, the interest income is an integral part of business activity in Iowa. Accordingly, J is required to file an Iowa income tax return and include the interest income from the mortgages related to Iowa property in the numerator of the apportionment factor.

**501.1(5)** *Taxation of "S" corporations, domestic international sales corporations and real estate investment trusts.* Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by Iowa law) for determining the amount and to whom the income is taxable.

Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file under Sections 1371-1378 of the Internal Revenue Code, domestic international sales corporations as authorized under Sections 991-997 of the Internal Revenue Code, and certain types of cooperatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under 701—Chapter 54. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding the nonresident taxpayer's Iowa taxable income.

For tax years beginning on or after January 1, 1995, S corporations which are subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in this state or from sources in this state.

*a.* The starting point for computing the Iowa tax on built-in gains is the amount of built-in gains subject to federal tax after considering the federal income limitation. The starting point for computing the capital gains subject to Iowa tax is the amount of capital gains subject to federal tax. The starting point for computing the passive investment income subject to Iowa income tax is the amount of passive investment income subject to federal tax. To the extent that any of the above three types of income exist for federal income tax purposes, they are combined for Iowa income tax purposes.

*b.* No adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation for tax years beginning prior to January 1, 2008, and for tax years beginning on or after January 1, 2014. The 50 percent of federal income tax and Iowa corporation income tax deducted in computing federal net income are adjustments to the Iowa net income which flows through to the shareholders for tax years beginning prior to January 1, 2008, and for tax years beginning on or after January 1, 2014. For tax years beginning on or after January 1, 2008, but before January 1, 2014, an adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation.

*c.* The allocation and apportionment rules of 701—Chapter 54 apply to nonresident shareholders if the S corporation is carrying on business within and without the state of Iowa.

*d.* Any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain, capital gains, or passive investment income of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, after the year of the net operating loss, the amount of the net recognized built-in gain shall be treated as taxable income. For taxable years beginning after August 5, 1997, a net operating loss can be carried forward 20 taxable years.

*e.* Except for estimated and other advance tax payments and any credit carryforward under Iowa Code section 422.33 arising in a taxable year for which the corporation was a C corporation no credits shall be allowed against the built-in gains tax or the tax on capital gains or passive investment income.

For tax years beginning after 1996, Iowa recognizes the federal election to treat subsidiaries of a parent corporation that has elected S corporation status as "qualified subchapter S subsidiaries" (QSSSs). To the extent that, for federal income tax purposes, the incomes and expenses of the QSSSs are combined with the parent's income and expenses, they must be combined for Iowa tax purposes.

**501.1(6)** *Exempted corporations and organizations filing requirements.*

*a. Exempt status.* An organization that is exempt from federal income tax under Section 501 of the Internal Revenue Code, unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code, is exempt from Iowa corporation income tax except as set forth in paragraph “e” of this subrule. The department may, if a question arises regarding the exempt status of an organization, request a copy of the federal determination letter.

*b. Information returns.* Every corporation shall file returns of information as provided by Iowa Code sections 422.15 and 422.16 and any regulations regarding information returns.

*c. Annual return.* An organization or association which is exempt from Iowa corporation income tax because it is exempt from federal income tax is not required to file an annual income tax return unless it is subject to the tax on unrelated business income. The organization shall inform the director in writing of any revocation of or change of exempt status by the Internal Revenue Service within 30 days after the federal determination.

*d. Tax on unrelated business income for tax years beginning on or after January 1, 1988.* A tax is imposed on the unrelated business income of corporations, associations, and organizations exempt from the general business tax on corporations by Iowa Code section 422.34(2) to the extent this income is subject to tax under the Internal Revenue Code. The exempt organization is also subject to the alternative minimum tax imposed by Iowa Code section 422.33(4).

The exempt corporation, association, or organization must file Form IA 1120, Iowa Corporation Income Tax Return, to report its income and complete Form IA 4626 if subject to the alternative minimum tax. The exempt organization must make estimated tax payments if its expected income tax liability for the year is \$1,000 or more.

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be extended six months if 90 percent of the tax is paid prior to the due date.

The starting point for computing Iowa taxable income is federal taxable income as properly computed before deduction for net operating losses. Federal taxable income shall be adjusted as required in Iowa Code section 422.35.

If the activities which generate the unrelated business income are carried on partly within and partly without the state, then the taxpayer should determine the portion of unrelated business income attributable to Iowa by the apportionment and allocation provisions of Iowa Code section 422.33.

The provisions of 701—Chapters 51, 52, 53, 54, 55 and 56 apply to the unrelated business income of organizations exempt from the general business tax on corporations.

*e. Certain posts or organizations of past or present armed forces members may be tax-exempt corporations for tax years beginning after May 21, 2003.* An organization that would have qualified as an organization exempt from federal income tax under Section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that 75 percent of the members need to be past or present armed forces members is not met because the membership includes ancestors or lineal descendants is considered to be an organization exempt from federal income tax.

This change is effective for tax years beginning after May 21, 2003.

*f. Out-of-state business performing work in Iowa due to state-declared disaster:* On or after January 1, 2016, see 701—Chapter 242 for filing requirements for an out-of-state business 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.

**501.1(7) Income tax of corporations in liquidation.** When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

**501.1(8) Income tax returns for corporations dissolved.** Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

**501.1(9) *Income tax returns for corporations storing goods in an Iowa warehouse.*** For tax years beginning on or after January 1, 2001, foreign corporations are not required to file income tax returns if their only activities in Iowa are the storage of goods for a period of 60 consecutive days or less in a warehouse for hire located in Iowa, provided that the foreign corporation transports or causes a carrier to transport such goods to that warehouse and that none of these goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 45 consecutive days. The goods are then delivered to a purchaser outside Iowa. If this is A's only activity in Iowa, A is not required to file an Iowa income tax return.

EXAMPLE 2: B, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 75 consecutive days. The goods are then delivered to a purchaser outside Iowa. B is required to file an Iowa income tax return because the goods were stored in Iowa for more than 60 consecutive days.

EXAMPLE 3: C, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. One percent of these goods are shipped to a purchaser in Iowa, and the other 99 percent are shipped to a purchaser outside Iowa. C is required to file an Iowa income tax return because a portion of the goods were shipped to a purchaser in Iowa.

EXAMPLE 4: D, a foreign corporation, has retail stores in Iowa. D also stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. The goods are then delivered to a purchaser outside Iowa. D is required to file an Iowa income tax return because its Iowa activities are not limited to the storage of goods in a warehouse for hire in Iowa.

EXAMPLE 5: E, a foreign corporation, has goods delivered by a common carrier, F, into a warehouse for hire in Iowa. The goods are stored in the warehouse for a period of 40 consecutive days, and are then delivered to a purchaser outside Iowa. If this is E's only activity in Iowa, E is not required to file an Iowa income tax return. However, F is required to file an Iowa income tax return because it derives income from transportation operations in Iowa.

**501.1(10) *Deferment of income for start-up companies.*** For tax periods beginning on or after January 1, 2002, but before January 1, 2008, a business that qualifies as a "start-up" business can defer taxable income for the first three years that the business is in operation. The deferment of income for start-up companies is repealed effective for tax years beginning on or after January 1, 2008.

*a. Definition of start-up business.* A start-up business for purposes of this subrule does not include any of the following:

- (1) An existing business locating in Iowa from another state.
- (2) An existing business locating in Iowa from another location in Iowa.
- (3) A newly created business which is the result of the merger of two or more businesses.
- (4) A newly created subsidiary or new business of a corporation.
- (5) A previously existing business which has been dissolved and reincorporated.
- (6) An existing business operating under a different name and located in a different location.
- (7) A newly created partnership owned by two or more of the same partners as an existing business and engaging in similar business activity as the existing business.
- (8) A business entity that reorganizes or experiences a change in either the legal or trade name of the business.

(9) A joint venture.

*b. Criteria for deferment of taxable income.* In order to qualify for the deferment of taxable income for a start-up business, each of the following criteria must be met:

- (1) The taxpayer is a business that is a wholly new start-up business beginning operations during the first tax year for which the deferment of taxable income is claimed.

- (2) The business has its commercial domicile, as defined by Iowa Code section 422.32, in Iowa.
- (3) The operations of the business are funded by at least 25 percent venture capital moneys. “Venture capital moneys” means an equity investment from an individual or a private seed and venture capital fund whose only business is investing in seed and venture capital opportunities. “Venture capital moneys” does not mean a loan or other nonequity financing from a person, financial institution or other entity.
- (4) The taxpayer does not have any delinquent taxes or other debt outstanding and owing to the state of Iowa.

*c. Request for deferment of income.* A taxpayer must submit a request to the department for the deferment of taxable income. The request must provide evidence that all of the criteria to qualify as a start-up business have been met. The request should be made as soon as possible after the close of the first tax year of the business. The request is to be filed with the Iowa Department of Revenue, Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. Upon determination that the criteria have been met, the department will notify the taxpayer that the deferment of taxable income is approved. If the request for deferment of taxable income is denied, the taxpayer may file a protest within 60 days of the date of the letter denying the request for deferment of taxable income. The department’s determination letter shall set forth the taxpayer’s rights to protest the department’s determination.

*d. Filing of tax returns.* If the request for deferment of taxable income is approved, taxable income for the first three years that the business is in operation is deferred. The taxpayer shall pay taxes on the deferred taxable income in five equal annual installments during the five tax years following the three years of deferment. Tax returns must be filed for each tax year in which the deferment is approved. If the taxpayer has a net loss during any tax year during the three-year deferment period, the loss may be applied to any deferred taxable income during that period. For purposes of assessing penalty and interest, the tax on any deferred income is not due and payable until the tax years in which the five equal annual installments are due and payable.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1:** A qualifying start-up business reports Iowa taxable income of \$1,000 in year one, \$5,000 in year two and \$10,000 in year three. The total tax deferred is \$60 in year 1, \$300 in year two and \$600 in year three, or \$960. The taxpayer shall pay \$192 (\$960 divided by 5) in deferred tax for each of the next five tax returns. No penalty or interest is due on the deferred annual tax of \$192 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that \$192 of additional tax is due annually for years four through eight, and when the additional payments of \$192 are due.

**EXAMPLE 2:** A qualifying start-up business reports an Iowa taxable loss of \$10,000 in year one, a loss of \$2,000 in year two and taxable income of \$22,000 in year three. The losses for year one and year two can be netted against the income in year three, resulting in deferred taxable income of \$10,000. The tax of \$600 computed on income of \$10,000 will be paid in five equal installments of \$120 for the next five tax returns. No penalty or interest is due on the deferred annual tax of \$120 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that \$120 of additional tax is due annually for years four through eight and when the additional payments of \$120 are due.

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33, 422.34, 422.34A, and 422.36 and Iowa Code section 422.24A as amended by 2008 Iowa Acts, Senate File 2400, section 66.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 3085C, IAB 5/24/17, effective 6/28/17; Editorial change: IAC Supplement 11/2/22]

## **701—501.2(422) Time and place for filing return.**

**501.2(1) Returns of corporations.** A return of income for all corporations must be filed on or before the due date. The due date for all corporations except for cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the

taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday, or holiday, the return will be due the following day that is not a Saturday, Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

**501.2(2) *Returns of cooperatives.*** A return of income for cooperatives, defined in Section 6072(d) of the Internal Revenue Code, must be filed on or before the fifteenth day of the ninth month following the close of the taxpayer's taxable year.

**501.2(3) *Short period returns.*** Where under a provision of the Internal Revenue Code, a corporation is required to file a tax return for a period of less than 12 months, a short period Iowa return must be filed for the same period. The short period Iowa return is due 45 days after the federal due date, not considering any federal extension of time to file.

**501.2(4) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.*** See 701—subrule 39.2(4).

This rule is intended to implement Iowa Code sections 422.21 and 422.24.  
[ARC 6551C, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

#### **701—501.3(422) Form for filing.**

**501.3(1) *Use and completeness of prescribed forms.*** Returns shall be made by corporations on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

**501.3(2) *Form for filing—domestic corporations.*** A domestic corporation, as defined by Iowa Code section 422.32(5), is required to file a complete Iowa return for each year of its existence regardless of whether the corporation has income, loss, or inactivity. For tax periods beginning on or after January 1, 1999, domestic corporations are required to file a complete Iowa return only if they are doing business in Iowa, or deriving income from sources within Iowa. For tax periods beginning on or after July 1, 2012, domestic corporations must also include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, alternative minimum tax computation, and statements detailing other income and other deductions.

When a domestic corporation is included in the filing of a consolidated federal income tax return, the Iowa corporation income tax return shall include a schedule of the consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group, and a schedule of capital gains on a separate basis.

If a domestic corporation claims a foreign tax credit, research activities credit, alcohol fuel credit, employer social security credit, or work opportunity credit on its federal income tax return, a detailed computation of the credits claimed shall be included with the Iowa return upon filing. In those instances where the domestic corporation is involved in the filing of a consolidated federal income tax return, the credit computations shall be reported on a separate entity basis.

Similarly, where a domestic corporation is charged with a holding company tax or an alternative minimum tax, the details of the taxes levied shall be put forth in a schedule to be included with the Iowa return. Furthermore, these taxes shall be identified on a separate company basis where the domestic corporation files as a member of a consolidated group for federal purposes.

**501.3(3) Form for filing—foreign corporations.** Foreign corporations, as defined by Iowa Code section 422.32(6), must include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, research activities credit computation, work opportunity credit computation, foreign tax credit computation, alcohol fuel credit computation, employer social security credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a foreign corporation whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

- a. Capital gains.
- b. Dividend income and special deductions.
- c. Research activities credit, alcohol fuel credit and employer social security credit computations.
- d. Work opportunity credit computation.
- e. Foreign tax credit computation.
- f. Holding company tax computation.
- g. Alternative minimum tax computation.
- h. Schedules detailing other income and other deductions.

**501.3(4) Amended returns.** If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 51.2(1) and rule 701—55.3(422).

This rule is intended to implement Iowa Code section 422.21 and section 422.36 as amended by 2012 Iowa Acts, Senate File 2328.

[ARC 0337C, IAB 9/19/12, effective 10/24/12; Editorial change: IAC Supplement 11/2/22]

#### **701—501.4(422) Payment of tax.**

**501.4(1) Quarterly estimated payments.** Effective for taxable years beginning on or after July 1, 1977, corporations are required to make quarterly payments of estimated income tax. Rules pertaining to the estimated tax are contained in 701—Chapter 56.

**501.4(2) Reserved.**

**501.4(3) Penalty and interest on unpaid tax.** See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by

the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

**501.4(4) *Payment of tax by uncertified checks.*** The department will accept uncertified checks in payment of income taxes, provided the checks are collectible for their full amount without any deduction for exchange or other charges unless requirements for electronic transmission of remittances and related information specify otherwise. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more corporations' taxes, the remittance must be accompanied by a letter of transmittal stating: (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each corporation whose tax is to be paid by the remittance; and (e) the amount of payment on account of each corporation.

**501.4(5) *Procedure with respect to dishonored checks.*** If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from his obligation until the check has been paid.

**501.4(6) *New jobs credit.*** Transferred to 701—52.8(422) IAB 11/28/90, effective 1/2/91.

This rule is intended to implement Iowa Code sections 422.21, 422.24, 422.25, 422.33 and 422.86. [Editorial change: IAC Supplement 11/2/22]

#### **701—501.5(422) Minimum tax.**

**501.5(1)** Reserved.

**501.5(2)** For tax years beginning after 1997, a small business corporation or a new corporation for its first year of existence, which through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small business corporation may apply any alternative minimum tax credit carryforward to the extent of its regular corporation income tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.33(1). The minimum tax rate is 60 percent of the maximum corporate tax rate rounded to the nearest one-tenth of 1 percent or 7.2 percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code section 422.35
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items
Less:	Iowa alternative tax net operating less deduction \$40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For tax years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for Subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for Subsections (a)(4) and (d) of the Internal Revenue Code used to compute federal alternative minimum taxable income. In making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities net of amortization of any discount or premium shall be subtracted. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. In making the adjustment for adjusted current earnings, subtract Foreign Sales Company (FSC) dividend income and Puerto Rican dividend income computed under Internal Revenue Code Section 936 to the extent they are included in the federal computation of adjusted current earnings. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

- a. Tax preference items are:
  1. Intangible drilling costs;
  2. Incentive stock options;
  3. Reserves for losses on bad debts of financial institutions;
  4. Appreciated property charitable deductions;
  5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.
- b. Adjustments are:
  1. Depreciation;
  2. Mining exploration and development;
  3. Long-term contracts;
  4. Iowa alternative minimum net operating loss deduction;
  5. Book income or adjusted earnings and profits.
- c. Losses added back are:
  1. Farm losses;
  2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—53.2(422) carried forward from tax years which begin before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years which begin after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying rule 701—53.2(422). The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the \$40,000 exemption exceeds \$150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

Federal taxable income before NOL	\$182,000
Federal NOL carryforward	<97,000>
Federal income tax	19,750
Tax preferences and adjustments	48,000
Iowa income tax expensed on federal	2,570
Iowa NOL carryforward	147,000

For tax year 1988, the following information is available:

Federal taxable income before NOL	\$<154,000>
Federal income tax refund	15,460
Tax preferences and adjustments	78,000
Iowa income tax refund reported on federal	2,570

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	\$182,000
less 50% federal tax	<9,875>
add Iowa income tax expensed	2,570
Iowa taxable income before NOL carryforward	<u>\$174,695</u>
less NOL carryforward	<147,000>
Iowa taxable income	\$ 27,695
Iowa income tax	\$ 1,716
Alternative Minimum Tax	
Iowa taxable income before NOL	\$174,695
add preferences and adjustments	48,000
Total	<u>\$222,695</u>
less NOL carryforward*	<u>&lt;147,000&gt;</u>
Iowa alternative taxable income	\$ 75,695
less exemption amount	<40,000>
Total	<u>\$ 35,695</u>
Times 7.2%	2,570
Less regular tax	<u>&lt;1,715&gt;</u>
Alternative minimum tax	\$ 855

\*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	\$ 182,000
less 50% federal tax	<9,875>
add Iowa income tax expensed	<u>2,570</u>
Iowa taxable income before NOL carryforward	\$ 174,695
less NOL carryforward	<147,000>
	<u>\$ 27,695</u>
less NOL carryback from 1988 <sup>1</sup>	<148,840>
NOL carryforward	<u>\$ &lt;121,145&gt;</u>
Alternative Minimum Tax	
Iowa taxable income before NOL	\$ 174,695
add preferences and adjustments	<u>48,000</u>
Total	\$ 222,695
less NOL carryforward from pre-1987 tax year	<147,000>
Total	<u>\$ 75,695</u>
less alternative minimum tax NOL <sup>2</sup>	<68,126>
Total	<u>\$ 7,569</u>
less exemption	<40,000>
Alternative minimum taxable income after NOL	<u>\$ -0-</u>

<sup>1</sup>Computation of 1988 Iowa NOL

Federal NOL	\$<154,000>
add 50% of federal refund	7,730
less Iowa refund in federal income	<2,570>
Iowa NOL	<u>\$&lt;148,840&gt;</u>

<sup>2</sup>Computation of 1988 Alternative Minimum Tax NOL

Iowa NOL	\$<148,840>
add preferences and adjustments	<u>78,000</u>
Total	\$ <70,840>
NOL carryback limited to 90% of alternative minimum income before NOL and exemption*	<u>\$ &lt;68,126&gt;</u>
Alternative minimum tax NOL carryforward	\$ 2,705

\*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the \$40,000 exemption amount ( $\$75,695 \times 90\% = \$68,126$ ).

**501.5(3)** Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

**501.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum

tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

*a. Computation of minimum tax credit on Schedule IA 8827.* The minimum tax credit is computed on Schedule IA 8827 from information on Schedule IA 4626 for prior tax years, from Form IA 1120 and Schedule IA 4626 for the current year and from Schedule IA 8827 for prior tax years.

*b. Examples of computation of the minimum tax credit and carryover of the credit.*

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax of \$8,000 and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax of \$8,000 and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

*c. Computation of the minimum tax credit attributable to a member leaving an affiliated group filing a consolidated Iowa corporation income tax return.* The amount of minimum tax credit available for carryforward attributable to a member of a consolidated Iowa income tax return shall be computed as follows: The consolidated minimum tax credit available for carryforward from each tax year is multiplied by a fraction, the numerator of which is the separate member's tax preferences and adjustments for the tax year and the denominator of which is the total tax preferences and adjustments of all members of the consolidated Iowa income tax return for the tax year.

*d. Computation of the amount of minimum tax credit which may be used by a new member of a consolidated Iowa corporation income tax return.* The amount of minimum tax credit carryforward which may be used by a new member of a consolidated Iowa income tax return is limited to the separate member's contribution to the amount by which the regular income tax set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

The separate member's contribution to the amount by which the regular income tax exceeds the tentative minimum tax shall be computed as follows:

$$\frac{\left[ \frac{A}{B} \times C + D \right] \times F}{E} = \text{Separate member's contribution to the amount by which regular income tax set forth in section 422.33 exceeds the tentative minimum tax.}$$

A = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated income subject to apportionment.

D = Separate corporation income allocable to Iowa.

E = Iowa consolidated income subject to tax.

F = The amount by which the regular income tax set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

*e. Minimum tax credit after merger.* When two or more corporations merge or consolidate into one corporation, the minimum tax credit of the merged or consolidated corporations is available for use by the survivor of the merger or consolidation.

This rule is intended to implement Iowa Code section 422.33.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 2829C, IAB 11/23/16, effective 1/1/17; Editorial change: IAC Supplement 11/2/22]

**701—501.6(422) Motor fuel credit.** A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. A corporation which holds a motor fuel tax refund permit when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes

invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of the income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

Shareholders of S corporations may claim an income tax credit on their individual income tax returns for their respective shares of the motor vehicle fuel taxes paid by the corporations. The credit for a shareholder is that person's pro rata share of the fuel tax paid by the corporation. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each shareholder.

The corporation must attach to its return a schedule showing the allocation to each shareholder of the motor fuel purchased by the corporation.

This rule is intended to implement Iowa Code section 422.33.

[Editorial change: IAC Supplement 11/2/22]

**701—501.7(422) Research activities credit.** The taxes imposed on corporate income shall be reduced by a state tax credit for increasing research activities in this state. For corporate income tax, the requirements of the research activities credit are described in Iowa Code section 422.33. This rule explains terms not defined in the statute and procedures for claiming the credit.

**501.7(1) Definitions.**

*“Accountant”* means a person authorized under Iowa Code chapter 542 to engage in the practice of public accounting in Iowa as defined in Iowa Code section 542.3(23) or authorized to engage in such practice in another state under a similar law of another state.

*“Architect”* means a person licensed under Iowa Code chapter 544A or a similar law of another state.

*“Aviation and aerospace”* means the design, development or production of aircraft, rockets, missiles, spacecraft and other machinery and equipment that operate in aerospace.

*“Collection agency”* means a person primarily engaged in the business of collecting debt, including but not limited to consumer debt collection subject to the provisions of the federal Fair Debt Collections Practices Act in 15 U.S.C. §1692 et seq., the Iowa debt collection practices Act in Iowa Code sections 537.7101 through 537.7103, or other similar state law.

*“Finance or investment company”* means a person primarily engaged in finance or investment activities broadly consisting of the holding, depositing, or management of a customer's money or assets for investment purposes, or the provision of loans or other similar financing or credit to customers. “Finance or investment company” includes but is not limited to a person organized or licensed under Iowa Code chapter 524, 533, or 533D or other similar state or federal law, or an investment company as defined in 15 U.S.C. §80a-3.

*“Life sciences”* means the sciences concerned with the study of living organisms, including agriscience, biology, botany, zoology, microbiology, physiology, biochemistry, and related subjects.

*“Manufacturing”* means the same as defined in 2018 Iowa Acts, Senate File 2417, section 183.

*“Publisher”* means a person whose primary business is the publishing of books, periodicals, newspapers, music, or other works for sale in any format.

*“Real estate company”* means a person licensed under Iowa Code chapter 543B or otherwise primarily engaged in acts constituting dealing in real estate as described in Iowa Code section 543B.6.

*“Retailer”* means a person that primarily engages in sales of personal property as defined in 2018 Iowa Acts, Senate File 2417, section 158, or services directly to an ultimate consumer. A business that primarily makes sales for resale is not a retailer.

*“Software engineering”* means the detailed study of the design, development, operation, and maintenance of software.

“*Transportation company*” means a person whose primary business is the transportation of persons or property from one place to another.

“*Wholesaler*” means a person that primarily engages in buying large quantities of goods and reselling them in smaller quantities to retailers or other merchants who in turn sell those goods to the ultimate consumer.

**501.7(2) Requirement that the business claim and be allowed the federal credit.** To claim this credit, a taxpayer’s business must claim and be allowed a research credit for such qualified research expenses under Section 41 of the Internal Revenue Code for the same taxable year as the taxpayer’s business is claiming the credit.

*a. Being “allowed” the federal credit.* For purposes of this subrule, a federal credit is “allowed” if the taxpayer meets all requirements to claim the credit under Section 41 of the Internal Revenue Code and any applicable federal regulation and Internal Revenue Service guidance and such credit has not been disallowed by the Internal Revenue Service.

*b. Applicability of requirement to pass-throughs.* If the individual received the Iowa credit through a pass-through entity, the pass-through entity that conducted the research must have claimed and been allowed the federal credit in order for the individual to claim the Iowa credit.

*c. Impact of federal audit.* If the Internal Revenue Service audits or otherwise reviews the return and disallows the credit, the taxpayer shall file an amended Iowa return along with supporting schedules, including an amended federal return or a copy of the federal revenue agent’s report and notification of final federal adjustments, to add back the Iowa credit to the extent not previously disallowed by the department.

*d. Authority of the department.* Nothing in this subrule shall limit the department’s authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 422.33, regardless of inaction, a settlement, or a determination by the Internal Revenue Service under Section 41 of the Internal Revenue Code.

**501.7(3) Calculating the credit.** For information on how the credit is calculated, see Iowa Code section 422.33.

**501.7(4) Claiming the tax credit.**

*a. Forms.* The credit must be claimed on the forms provided on the department’s website and must include all information required by the forms.

*b. Allocation to the individual owners of an entity or beneficiaries of an estate or trust.* If the business is a partnership, S corporation, limited liability company, estate or trust where the income from the business is taxed to the individual owners of the business, these individual owners may claim the research activities credit allowed to the business. The research credit is allocated to each of the individual owners of the business on the basis of the pro rata share of that individual’s earnings from the business.

*c. Refundability.* Any research credit in excess of the corporation’s tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation’s tax liability for the following year.

*d. Transferability.* Tax credit certificates shall not be transferred to any other person.

*e. Enterprise zone claimants.* The enterprise zone program was repealed on July 1, 2014. Any supplemental research activities credit earned by businesses pursuant to Iowa Code section 15.335 and approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

This rule is intended to implement Iowa Code sections 15.335 and 422.33 as amended by 2018 Iowa Acts, Senate File 2417.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 0337C, IAB 9/19/12, effective 10/24/12; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 1545C, IAB 7/23/14, effective 8/27/14; ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 4143C, IAB 11/21/18, effective 12/26/18; Editorial change: IAC Supplement 11/2/22]

**701—501.8(422) New jobs credit.** A tax credit is available to a corporation which has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

**501.8(1) Definitions.**

a. The term “*new jobs*” means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in the state.

b. The term “*jobs directly related to new jobs*” means those jobs which directly support the new jobs but does not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee’s vacant position is filled by a new employee.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line but does not fill the transferred employee’s position. The new supervisor’s position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee’s old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line and fills the transferred employee’s position with a new employee. The new supervisor’s position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee’s old position was filled by a new employee.

The burden of proof that a job is directly related to new jobs is on the taxpayer.

c. The term “*taxable wages*” means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code section 96.1A(36) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal-year taxpayers, “taxable wages” shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer’s fiscal year begins.

d. The term “*agreement*” means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term “agreement” also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitment relating to training programs and new jobs.

e. The term “*base employment level*” means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under chapter 260E on the date of the agreement.

f. The term “*project*” means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

g. The term “*industry*” means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services. Industry does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. Industry is a business engaged in the above listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

h. The term “*new employees*” means the same as new jobs or jobs directly related to new jobs.

i. The term “*full-time job*” means any of the following:

- (1) An employment position requiring an average work week of 35 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 or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, 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)

**501.8(2) *How to compute the credit.*** The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees which left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

**501.8(3) *When the credit can be taken.*** The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement 2 of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A shareholder in an S corporation may claim the pro rata share of the Iowa new jobs credit on the shareholder's individual tax return. The S corporation shall provide each shareholder with a schedule showing the computation of the corporation's Iowa new jobs credit and the shareholder's pro rata share. The shareholder's pro rata share of the Iowa new jobs credit shall be in the same ratio as the shareholder's pro rata share in the earnings of the S corporation. All shareholders of an S corporation shall elect to take the Iowa new jobs credit the same year.

Any new jobs credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91, and 422.110 may be carried forward for ten years or until it is used, whichever is the earliest.

This rule is intended to implement Iowa Code section 422.33.

[Editorial change: IAC Supplement 11/2/22]

**701—501.9** Reserved.

**701—501.10(15) New jobs and income program tax credits.** For tax years ending after May 1, 1994, for programs approved after May 1, 1994, but before July 1, 2005, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the investment tax credit and additional research activities credit under the high quality job creation program. Any investment tax credit and additional research activities credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005.

**501.10(1) Definitions:**

- a. “*Eligible business*” means a business meeting the conditions of Iowa Code section 15.329.
- b. “*Improvements to real property*” includes the cost of utility lines, drilling wells, construction of sewage lagoons, parking lots and permanent structures. The term does not include temporary structures.
- c. “*Machinery and equipment*” means machinery used in manufacturing establishments and computers except point-of-sale equipment as defined in Iowa Code section 427A.1. The term does not include computer software.
- d. “*New investment directly related to new jobs created by the location or expansion of an eligible business under the program*” means the cost of machinery and equipment purchased for use in the operation of the eligible business which has been depreciated in accordance with generally accepted accounting principles and the cost of improvements to real property.

For the cost of improvements to real property to be eligible for an investment tax credit, the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332. Replacement machinery and equipment and additional improvements to real property placed in service during the period of property tax exemption by an eligible business qualify for an investment tax credit.

For tax years beginning on or after January 1, 2001, the requirement that the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332 has been eliminated.

**501.10(2) Investment tax credit.** An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

If an eligible business fails to maintain the requirements of the new jobs and income program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of the new jobs and income program because this is a recovery of an incentive,

rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**501.10(3) Research activities credit.** An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**501.10(4) Investment tax credit—value-added agricultural products.** For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. For tax years

beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses that elect to receive a refund shall apply to the economic development authority for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The economic development authority will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings in the cooperative. The economic development authority will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1.** Corporation A completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation A is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation A applies for a tax credit certificate for the entire unused credit of \$1 million in May 2002. The entire \$1 million is approved by the economic development authority, so the tax credit certificate is included with the tax return for the year ending December 31, 2002. Corporation A will request a refund of \$1 million on this tax return.

**EXAMPLE 2.** Corporation B completes a value-added agricultural project in October 2001 and has an investment tax credit of \$1 million. Corporation B is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation B applies for a tax credit of \$1 million in May 2002. Due to the proration of available credits, Corporation B is awarded a tax credit certificate for \$400,000. The tax credit certificate is included with the tax return for the year ending December 31, 2002. Corporation B will request a refund of \$400,000 on this tax return. The remaining \$600,000 of unused credit can be carried forward for the following seven tax years or until the credit is depleted, whichever occurs first. If Corporation B expects no tax liability for the tax period ending December 31, 2002, Corporation B may apply for a tax credit certificate in May 2003 for this \$600,000 amount.

**EXAMPLE 3.** Corporation C completes a value-added agricultural project in March 2002 and has an investment tax credit of \$1 million. Corporation C is required to file an Iowa income tax return and expects a tax liability of \$200,000 for the tax period ending December 31, 2002. Thus, Corporation C

applies for a tax credit certificate for the unused credit of \$800,000 in May 2002. A tax credit certificate is awarded for the entire \$800,000. The tax credit certificate for \$800,000 shall be included with the tax return for the period ending December 31, 2003, since the certificate is not valid until the year following the project's completion. The tax return for the period ending December 31, 2002, reports a tax liability of \$150,000. The investment credit is limited to \$150,000 for the period ending December 31, 2002, and the remaining \$50,000 can be carried forward for the following seven tax years.

EXAMPLE 4. Corporation D is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation D has an investment tax credit of \$500,000. Corporation D is not required to file an Iowa income tax return because Corporation D is exempt from federal income tax. When filing for the tax credit certificate in May 2003 for the \$500,000 unused credit, Corporation D must attach a list of its members and the share of each member's interest in the cooperative. The economic development authority will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members can include the tax credit certificate with their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 5. Corporation E is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation E has an investment tax credit of \$500,000. Corporation E is required to file an Iowa income tax return because Corporation E is not exempt from federal income tax. Corporation E expects a tax liability of \$100,000 on its Iowa income tax return for the year ending December 31, 2002. Corporation E applies for a tax credit certificate for the unused credit of \$400,000 and elects to transfer the \$400,000 unused credit to its members. When applying for the tax credit certificate in May 2003, Corporation E must provide a list of its members and the pro rata share of each member's earnings in the cooperative. The economic development authority will issue tax credit certificates to each member of the cooperative. The members can include the tax credit certificate with their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of \$500,000 which must be claimed by the individual partners of the partnership based on their pro rata share of individual earnings of the partnership. Corporation F expects a tax liability of \$200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of \$300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003.

**501.10(5) Corporate tax credit—certain sales taxes paid by developer.** For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

*a. Sales taxes eligible for the credit.* The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

*b. How to claim the credit.* The third-party developer must provide to the economic development authority the amount of Iowa sales and use tax paid as described in paragraph "a." Beginning on July 1,

2009, this information must be provided to the Iowa department of revenue. The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The economic development authority will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the economic development authority will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. Beginning on July 1, 2009, the Iowa department of revenue shall issue these tax credit certificates.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be included with the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, high quality job creation program, enterprise zone program, new capital investment program and high quality jobs program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and 15.335.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

#### **701—501.11(422) Refunds and overpayments.**

**501.11(1) to 501.11(9)** Reserved.

**501.11(10)** *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

**501.11(11) to 501.11(13)** Reserved.

**501.11(14)** *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

[Editorial change: IAC Supplement 11/2/22]

#### **701—501.12(422) Deduction of credits.**

**501.12(1)** *Sequencing of credit deductions.* The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be claimed in the following sequence.

- a. Franchise tax credit.
- b. Alternative minimum tax credit (for tax years beginning during 2021 only).
- c. Qualifying business investment tax credit (also known as angel investor tax credit).
- d. Historic preservation tax credit (when the taxpayer has elected that the credit be nonrefundable under Iowa Code section 404A.2(4)).

- e. School tuition organization tax credit.
- f. Innovation fund investment tax credit.
- g. Endow Iowa tax credit.
- h. Redevelopment tax credit.
- i. From farm to food donation tax credit.
- j. Workforce housing tax credit.
- k. Hoover presidential library tax credit.
- l. Enterprise zone tax credit.
- m. High quality jobs investment tax credit.
- n. Wind energy production tax credit.
- o. Renewable energy tax credit.
- p. New jobs tax credit.
- q. Beginning farmer tax credit.
- r. Agricultural assets transfer tax credit.
- s. Custom farming contract tax credit.
- t. Solar energy system tax credit.
- u. Charitable conservation contribution tax credit.
- v. Alternative minimum tax credit (for tax years beginning before January 1, 2021, only).
- w. Historic preservation tax credit (when the taxpayer has elected that the credit be refundable under Iowa Code section 404A.2(4)).
- x. High quality jobs third-party developer tax credit.
- y. Research activities credit.
- z. Assistive device tax credit.
- aa. Motor fuel tax credit.
- ab. E-85 gasoline promotion tax credit.
- ac. Biodiesel blended fuel tax credit.
- ad. E-15 plus gasoline promotion tax credit.
- ae. Renewable chemical production tax credit.
- af. Estimated payments, payments with vouchers, and composite tax credits.

**501.12(2) Order of credits carried forward from a previous tax year.** A credit carried forward from a previous tax year shall be applied against computed tax before a credit earned under the same credit program in the current tax year. However, a credit carried forward from a previous tax year cannot be applied against computed tax before a credit awarded under a different credit program in a later year that appears before it in the sequence in subrule 52.12(1). For example, a school tuition organization tax credit awarded in the current tax year must be applied against computed tax before a renewable energy tax credit carried forward from a previous tax year.

This rule is intended to implement Iowa Code sections 422.33, 422.91 and 422.110.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 6030C, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22; ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—501.13(422) Livestock production credits.** For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

[Editorial change: IAC Supplement 11/2/22]

**701—501.14(15E) Enterprise zone tax credits.** For tax years ending after July 1, 1997, for programs approved after July 1, 1997, but before July 1, 2014, a business which qualifies under the enterprise zone program is eligible to receive tax credits. The enterprise zone program was repealed on July 1, 2014. Any tax credits earned by businesses approved under the enterprise zone program prior to July 1, 2014, remain valid and can be claimed on tax returns filed after July 1, 2014. An eligible business under the enterprise zone program must be approved by the economic development authority and meet

the requirements of 2014 Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the economic development authority may be found at 261—Chapter 59.

**501.14(1) *Supplemental new jobs credit from withholding.*** An eligible business approved under the enterprise zone program is allowed the supplemental new jobs credit from withholding as provided in 701—subrule 46.9(1).

**501.14(2) *Investment tax credit.*** An eligible business approved under the enterprise zone program is allowed an investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the eligible business.

The provisions under the new jobs and income program for the investment tax credit described in rule 701—52.10(15) are applicable to the enterprise zone program with the following exceptions:

*a.* The corporate tax credit for certain sales taxes paid by a developer described in subrule 52.10(5) does not apply for the enterprise zone program.

*b.* For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 52.28(2).

*c.* For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment credit as described in subrule 52.10(4).

**501.14(3) *Research activities credit.*** An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in subrules 52.7(5) and 52.7(6).

*a. Tax years ending on or after July 1, 2005, but before July 1, 2009.* For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program described in subrule 52.28(1) shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.28(1) for businesses approved under the high quality job creation program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

*b. Tax years ending on or after July 1, 2009.* For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities.

(1) For purposes of this paragraph, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity.

(2) The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality jobs program described in subrule 52.28(1) shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

(3) These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.40(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

**501.14(4) *Repayment of incentives.*** Effective July 1, 2003, eligible businesses in an enterprise zone may be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the enterprise zone program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement 2014 Iowa Code sections 15E.193 and 15E.196.  
[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.15(15E) Eligible housing business tax credit.** A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—52.46(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 2014 Iowa Code section 15E.193B.

**501.15(1) *Computation of tax credit.*** New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro rata share of the earnings of the partnership, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules

of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the economic development authority may be found under 261—Chapter 59.

**501.15(2) *Transfer of the eligible housing business tax credit.*** For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

**EXAMPLE 1:** A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling \$250,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The \$250,000 tax credit is going to be transferred to ABC Company, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, ABC Company cannot file an amended Iowa corporation income tax return for the 2013 tax year until January 1, 2016, to claim the \$250,000 tax credit.

**EXAMPLE 2:** A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling \$150,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The \$150,000 tax credit is going to be transferred to XYZ Company, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, XYZ Company cannot file an amended Iowa corporation income tax return for the 2014 tax year until January 1, 2016, to claim the \$150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the economic development authority, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the economic development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2014 Iowa Code section 15E.193B.  
[ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.16(422) Franchise tax credit.** For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

[Editorial change: IAC Supplement 11/2/22]

**701—501.17(422) Assistive device tax credit.** Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first \$5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

**501.17(1) Submitting applications for the credit.** A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa

department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed \$500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not included with the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to include a copy of the certificate of entitlement and the statement of allocation of the assistive device credit with the individual's state income tax return.

**501.17(2) Definitions.** The following definitions are applicable to this subrule:

*"Assistive device"* means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

*"Business entity"* means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

*"Disability"* means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

*"Employee"* means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

“*Small business*” means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

“*Workplace modifications*” means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

**501.17(3) Allocation of credit to owners of a business entity.** If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of \$2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.  
[ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.18(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014.** A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer’s Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the approved rehabilitation projects of eligible property in Iowa.

The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. 2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue’s provisions for projects with tax credits reserved prior to July 1, 2014, are found in this rule. The department of revenue’s provisions for projects with agreements entered into on or after July 1, 2014, are found in rule 701—52.47(404A,422). The department of cultural affairs’ rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by rule 701—52.47(404A,422).

**501.18(1) Eligible property for the historic preservation and cultural and entertainment district tax credit.** The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing.
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.
- c. Property or district designated a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

**501.18(2) Application and review process for the historic preservation and cultural and entertainment district tax credit.**

- a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be

requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered.

*b.* Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

**501.18(3)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by the state historic preservation office for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

*a.* In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of property other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less.

*b.* In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation costs.

*c.* For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation costs that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

EXAMPLE: The basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code.

**501.18(4)** *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa*

*return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate, which shall be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, and any consideration received in exchange for the tax credit, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be included with the income tax return for the period in which the project was completed.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**501.18(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to individual owners of the entity for tax credits reserved for fiscal years beginning on or after July 1, 2012.* For tax credits reserved for fiscal years beginning on or after July 1, 2012, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

**501.18(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than \$1,000 shall not be transferable.

*a.* For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. Within 90 days of the transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number and address, the denomination that each replacement tax credit certificate is to carry, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate

must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

*b.* The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c.* If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the tax credit shall be fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.33.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1138C, IAB 10/30/13, effective 12/4/13; ARC 1968C, IAB 4/15/15, effective 5/20/15; Editorial change: IAC Supplement 11/2/22]

**701—501.19(422) Ethanol blended gasoline tax credit.** Effective for tax years beginning on or after January 1, 2002, an ethanol blended gasoline tax credit may be claimed against a taxpayer's corporation income tax liability for retail dealers of gasoline. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a \$250 credit available.

The credit may be calculated on Form IA 6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit can be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) for the same tax year for the same ethanol gallons.

EXAMPLE: A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total

gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

**501.19(1) Definitions.** The following definitions are applicable to this rule:

“*Ethanol blended gasoline*” means the same as defined in Iowa Code section 214A.1 as amended by 2006 Iowa Acts, House File 2754, section 3.

“*Gasoline*” means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

“*Motor fuel pump*” means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

“*Retail dealer*” means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

“*Retail motor fuel site*” means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

“*Sell*” means to sell on a retail basis.

**501.19(2) Allocation of credit to owners of a business entity.** If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of \$3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of \$750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

**501.19(3) Repeal of ethanol blended gasoline tax credit.** The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer’s fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 701—52.36(422) is available beginning January 1, 2009, for retail dealers of gasoline.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year end of April 30, 2009. The taxpayer sold 150,000 gallons of gasoline from May 1, 2008, through December 31, 2008, at the taxpayer’s retail motor fuel site, of which 110,000 gallons was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 110,000 less 90,000, or 20,000 gallons. The taxpayer may claim the ethanol blended gasoline tax credit for the fiscal year ending April 30, 2009, in the amount of \$500, or 20,000 gallons times two and one-half cents.

This rule is intended to implement Iowa Code section 422.33 as amended by 2006 Iowa Acts, House File 2754.

[Editorial change: IAC Supplement 11/2/22]

**701—501.20(15E) Eligible development business investment tax credit.** Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.  
[Editorial change: IAC Supplement 11/2/22]

#### **701—501.21(15E,422) Venture capital credits.**

**501.21(1)** *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.*

*a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011.

*b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015.* For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment, but these investments cannot be redeemed prior to January 1, 2016. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the

tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

*c. Equity investments in a qualifying business on or after July 2, 2015.* For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed \$2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon a pro rata share of the individual's earnings from the entity.

(3) Year in which the credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For the purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 701—paragraph 42.22(1) "c."

(5) Carryforward period. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division III, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

(6) Refunds, transfers, and carryback prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not refundable and is not transferable to any other taxpayer.

**501.21(2)** *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**501.21(3)** *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**501.21(4)** *Innovation fund investment tax credit.* See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in the form of cash in an innovation fund for tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit equal to 25 percent of the taxpayer's equity investment in the form of cash in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall claim the tax credit for the tax year in which the investment is made. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. No tax credit certificates will be issued prior to September 1, 2014. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the investment was made as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ending on December 31, 2013, makes an equity investment in December 2013 and the \$8 million cap for the fiscal year ending June 30, 2014, had already been reached, the tax credit will be issued for the tax year ending December 31, 2014, and can be redeemed for the tax year ending December 31, 2014.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

The innovation fund tax credit certificate may be transferred once to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited

liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the innovation fund tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.42, 15E.52, 15E.66 and 422.33 and section 15E.43 as amended by 2015 Iowa Acts, chapter 138.

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**701—501.22(15) New capital investment program tax credits.** Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

**501.22(1) Research activities credit.** A business approved under the new capital investment program is eligible for an additional research activities credit as described in subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 52.7(3).

**501.22(2) Investment tax credit.**

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph "b." New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs "e" and "j," purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period

cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

*b. Tax credit percentage.* The amount of tax credit claimed shall be based on the number of high-quality jobs created as determined by the Iowa department of economic development:

(1) If no high-quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high-quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high-quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high-quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high-quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

*c. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 52.10(4). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

*d. Repayment of benefits.* If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative

rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**501.22(3) Corporate tax credit—certain sales taxes paid by developer.** For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

*a. Sales taxes eligible for the credit.* The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

*b. How to claim the credit.* The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph “a.” The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer’s income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer’s tax liability is refundable. In lieu of

claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and 15.381 to 15.387.

[ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.23(15E,422) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 and subsequent calendar years, the total amount of endow Iowa tax credits is \$6 million; the maximum amount of tax credit authorized to a single taxpayer is \$300,000 (\$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount

claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620, and Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1138C, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22]

**701—501.24(422) Soy-based cutting tool oil tax credit.** Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2005 Iowa Acts, Senate File 389.

[Editorial change: IAC Supplement 11/2/22]

**701—501.25(151,422) Wage-benefits tax credit.** Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

**501.25(1) Definitions.** The following definitions are applicable to this rule:

*"Average county wage"* means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

*"Benefits"* means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

*"Department"* means the Iowa department of revenue.

*"Full-time"* means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, 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.

“*Grow Iowa values fund*” means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

“*Nonqualified new job*” means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

“*Qualified new job*” or “*job creation*” means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

“*Retail business*” means a business which sells its product directly to a consumer.

“*Retained qualified new job*” or “*job retention*” means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

“*Service business*” means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

**501.25(2)** *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

- a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.
- b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.
- c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**501.25(3)** *Application for the tax credit, tax credit certificate and amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

- (1) Name, address and federal identification number of the business.
- (2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.
- (3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.
- (4) A computation of the amount of credit being requested.
- (5) The address and state of residence of each new employee.
- (6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

*b.* Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

*c.* If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

*d.* The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million for the fiscal year ending June 30, 2007, and shall not exceed \$4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the \$4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the \$4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million or \$4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

*e.* A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the \$4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 52.25(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first \$4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

*f.* For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first \$4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of \$4 million were issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the \$4 million in wage-benefits tax credits filed applications totaling \$3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first \$3 million of the available \$4 million will be allowed to these same businesses. The remaining \$1 million that is still available for the year ending June 30, 2008, will

be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining \$1 million in tax credits is issued.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150, or moneys from the grow Iowa values fund.

**501.25(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is \$11.86 per hour. If the average county wage per hour for Clayton County is \$11.95 for the fourth quarter of 2005, \$12.05 for the first quarter of 2006, and \$12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is \$12.00 per hour. This wage equates to an average annual wage of \$24,960 ( $\$12.00 \times 40 \text{ hours} \times 52 \text{ weeks}$ ). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$32,448 (130 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$39,936 (160 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is \$13.75 per hour in Grundy County, this wage equates to an average county wage of \$28,600. The wages and benefits for each of these three new employees is \$40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of \$2,000 for each employee ( $\$40,000 \times 5 \text{ percent}$ ), for a total wage-benefits tax credit of \$6,000. If Business E files on a calendar-year basis, the \$6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the

business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than \$4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than \$4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

**501.25(5) *Repeal of the wage-benefits tax credit.*** The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 52.25(3), paragraphs “d,” “e,” and “f.” A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code section 422.33(18).

[Editorial change: IAC Supplement 11/2/22]

**701—501.26(422,476B) Wind energy production tax credit.** Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer’s Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

**501.26(1) *Application and review process for the wind energy production tax credit.*** An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate capacity of no less than  $\frac{3}{4}$  of a megawatt.

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 50 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a

facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

**501.26(2) *Computation of the credit.*** The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

**EXAMPLE:** A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of “related person” uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer’s name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.26(1).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner’s, member’s, shareholder’s or beneficiary’s pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder’s interest in the partnership, limited liability company or S corporation, or the beneficiary’s interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**501.26(3) *Transfer of the wind energy production tax credit certificate.*** The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and chapter 476B as amended by 2011 Iowa Acts, House File 672.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0251C, IAB 8/8/12, effective 9/12/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.27(422,476C) Renewable energy tax credit.** Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability.

**501.27(1) *Eligible facility application process.***

*a. Eligible facility application process, generally.* A producer or purchaser of a renewable energy facility must be approved as an eligible renewable energy facility by the Iowa utilities board in order to qualify for the renewable energy tax credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2018. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

*b. Limitations on maximum energy production and nameplate generating capacity.* The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts of nameplate generating capacity. For tax years beginning prior to January 1, 2015, the maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 53 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. For tax years beginning on or after January 1, 2015, the maximum amount of energy production for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 63 megawatts of nameplate generating capacity and, annually, 167 billion British thermal units of heat for a commercial purpose. A facility

that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. Extensions can be renewed for succeeding 12-month periods if the facility applies for the extension prior to expiration of the current extension period. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility. However, for tax years beginning on or after January 1, 2015, an entity described in Iowa Code section 476C.1(6) “b”(4) or (5) may have an ownership interest in up to four solar energy conversion facilities described in Iowa Code section 476C.3(4) “b”(3).

**501.27(2) Tax credit certificate procedure.**

*a. Tax credit application process.* A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1). The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that were generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year for which the credit is applied.

*b. Tax credit calculation.* The department shall calculate the amount of the credit for which the applicant is eligible in accordance with subrules 52.27(3) and 52.27(4) and shall issue a tax credit certificate for that amount or shall notify the applicant in writing of its refusal to do so.

*c. Tax credit certificate issuance.* The tax credit certificate will include the taxpayer’s name, address and federal identification number; the tax type for which the credit will be claimed; the amount of the credit; and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(5). Once a tax credit certificate is issued pursuant to Iowa Code chapter 476C, it shall not be terminated or rescinded.

*d. Taxpayers that are partnerships, limited liability companies, S corporations, or estates or trusts.* If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner’s, member’s, shareholder’s or beneficiary’s pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder’s interest in the partnership, limited liability company or S corporation or of the beneficiary’s interest in the estate or trust.

*e. Carryforward.* To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

**501.27(3) Limitations.**

*a. Energy production.* Of the maximum amount of energy production capacity equivalent for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities;

(1) No single facility may be allocated more than ten megawatts of nameplate generating capacity or energy production capacity equivalent.

(2) For tax years beginning on or after January 1, 2015, ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be reserved for solar energy conversion facilities described in Iowa Code section 476C.3(4)“b”(3) that have a generating capacity of one and one-half megawatts or less.

(3) For tax years beginning on or after January 1, 2014, 55 billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area.

(4) For tax years beginning on or after January 1, 2014, the maximum annual amount of energy production capacity for a single refuse conversion facility is 55 billion British thermal units of heat for a commercial purpose.

*b. Related persons.* The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

*c. Operation.* The facility must be operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.27(1).

*d. Prohibited for persons that have received a credit under Iowa Code chapter 476B.* A person that has received a wind energy production tax credit pursuant to Iowa Code chapter 476B may not be issued a renewable energy tax credit certificate.

*e. Ten-year award limitation.* The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

**501.27(4) Computation of the credit.** The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or \$1.44 per 1000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility or used for on-site consumption by the producer may exceed 12 months if the facility was operational for fewer than 12 months in its initial year of operation.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased or used for on-site consumption by the producer between April 1, 2006, and December 31, 2007.

**501.27(5) Transfer of the renewable energy tax credit certificate.**

*a. One-transfer limitation.* The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

*b. Transfer process—information required.* Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee’s name, address and tax identification number; the amount of the tax credit being transferred; the value of any consideration provided by the transferee to the transferor; and any other information required by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit

certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

*c. Tax year.* The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit.

*d. Consideration.* Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**501.27(6) *Small wind innovation zones.*** Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

**501.27(7) *Appeals.*** If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

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**701—501.28(15) High quality job creation program.** Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—52.40(15) for information on the investment tax credit and additional research activities credit under the high quality jobs program. Any investment tax credit and additional research activities credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid and can be claimed on tax returns filed after July 1, 2009.

**501.28(1) *Research activities credit.*** An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as subrule described in 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 52.7(3). The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

**501.28(2) Investment tax credit.**

*a. General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer’s cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned \$100,000 of investment tax credits for new investment made in 2006. The business can claim \$20,000 of investment tax credits for each of the years from 2006 through 2010. The \$20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the \$20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual’s pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis was awarded \$500,000 in investment tax credits in December 2008. The credits were amortized over a five-year period, with \$100,000 of investment tax credits being available for the fiscal years ending June 30, 2009, through June 30, 2013. This equates to the investment tax credit being available for the 2008-2012 calendar year returns since the due date of these returns range from April 30, 2009, through April 30, 2013, which falls within the fiscal years ending June 30, 2009, through June 30, 2013. The eligible business placed the qualifying assets in service during the 2010 calendar year. The eligible business can claim \$300,000 of investment tax credit for 2010, \$100,000 of investment tax credit for 2011 and \$100,000 of investment tax credit for 2012. Of the \$300,000 claimed for the 2010 tax year, \$100,000 can be carried forward until the 2015 tax year, \$100,000 can be carried forward to the 2016 tax year, and \$100,000 can be carried forward to the 2017 tax year. The seven-year carryforward period is

determined by the amortization schedule, not the initial year in which the investment tax credit can be claimed on an Iowa tax return.

*b. Investment tax credit—value-added agricultural products or biotechnology-related processes.* An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 52.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

*c. Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

- (1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- (2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- (3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- (4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

**501.28(3) Determination of tax credit amounts.** The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

*a.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7) “*a*” for the amount of tax credits that may be claimed.

*b.* If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7) “*b*” for the amount of tax credits that may be claimed.

*c.* An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—52.25(15H).

This rule is intended to implement Iowa Code Supplement chapter 15.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.29(15E,422) Economic development region revolving fund tax credit.** Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer’s contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.232 and 422.33 as amended by 2010 Iowa Acts, Senate File 2380.

[ARC 9104B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 11/2/22]

**701—501.30(422) E-85 gasoline promotion tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. “E-85 gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135.

**501.30(1) Claiming the credit.**

*a. Amount of credit.* The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007, and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar years 2012 through 2024	16 cents

*b. Claiming the credit with other credits.* A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—52.19(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2009, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

*c. Refundability.* Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*d. Transferability.* The credit may not be transferred to any other person.

*e. Example.* A taxpayer operated one retail motor fuel site in 2006 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2006. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2006 tax year.

**501.30(2) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

**EXAMPLE 1:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending March 31, 2009. The taxpayer sold 2,000 gallons of E-85 gasoline for the period from April 1, 2008, through December 31, 2008, and sold 500 gallons of E-85 gasoline for the period from January 1, 2009, through March 31, 2009. The taxpayer is entitled to a total E-85 gasoline promotion tax credit of \$600 for the fiscal year ending March 31, 2009, which consists of a \$500 credit (2,000 gallons multiplied by 25 cents) for the period from April 1, 2008, through December 31, 2008, and a credit of \$100 (500 gallons multiplied by 20 cents) for the period from January 1, 2009, through March 31, 2009.

**EXAMPLE 2:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2006. The taxpayer sold 800 gallons of E-85 gasoline for the period from January 1, 2006, through April 30, 2006. The taxpayer is entitled to claim an E-85 gasoline promotion tax credit of \$200 (800 gallons multiplied by 25 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006. In lieu of claiming the credit on the return for the period ending April 30, 2006, the taxpayer can claim the E-85 gasoline promotion tax credit on the tax return for the period ending April 30, 2007, including all E-85 gallons sold for the period from January 1, 2006, through April 30, 2007.

**501.30(3) Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.** If a taxpayer claiming the E-85 gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2016 Iowa Acts, Senate File 2309.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 3043C, IAB 4/26/17, effective 5/31/17; Editorial change: IAC Supplement 11/2/22]

**701—501.31(422) Biodiesel blended fuel tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. “Biodiesel blended fuel” means a blend of biodiesel with petroleum-based diesel fuel that meets the standards provided in Iowa Code section 214A.2. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

**501.31(1) Calculating the credit.**

*a. Gallonage requirement.*

(1) Tax years beginning on or after January 1, 2006, but prior to January 1, 2009. In order for a retail dealer to qualify for the biodiesel blended fuel tax credit for tax years beginning on or after January 1, 2006, but prior to January 1, 2009, of the total gallons of diesel fuel that the retail dealer sells and dispenses during the tax year, 50 percent or more of those gallons must be biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel. The gallonage amounts for all motor fuel sites of a retail dealer are combined when calculating this gallonage requirement.

(2) Tax years beginning on or after January 1, 2009, but prior to January 1, 2012. For tax years beginning on or after January 1, 2009, but prior to January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel.

(3) Tax years beginning on or after January 1, 2012. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated. A retail dealer may qualify for the biodiesel fuel tax credit even if the gallons of biodiesel blended fuel sold is less than 50 percent of the total gallons of diesel fuel sold.

*b. Amount of credit.*

(1) Fuel sold on or after January 1, 2006, but prior to January 1, 2012. For biodiesel blended fuel sold on or after January 1, 2006, but prior to January 1, 2012, the tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year. Qualifying biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel.

(2) Fuel sold on or after January 1, 2012, but prior to January 1, 2013. For biodiesel blended fuel sold on or after January 1, 2012, but prior to January 1, 2013, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel plus four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In addition, the gallonage requirements described in paragraph 52.31(1) “a” do not apply to fuel sold on or after January 1, 2012.

(3) Fuel sold on or after January 1, 2013, but prior to January 1, 2018. For biodiesel blended fuel sold on or after January 1, 2013, but prior to January 1, 2018, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

(4) Fuel sold on or after January 1, 2018, but prior to January 1, 2025.

1. Amount of credit. For biodiesel blended fuel sold on or after January 1, 2018, but prior to January 1, 2025, the tax credit equals the sum of three and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel plus five and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 11 percent by volume of biodiesel.

2. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to contain 11 percent

by volume of biodiesel, a 1 percent tolerance applies in determining the credit amount for the blended product as described in 52.31(1)“b”(4)“2”:

- If the amount of the biodiesel erroneously blended with petroleum-based diesel is at least 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.
- If the amount of biodiesel blended with petroleum-based diesel is at least 5 percent but less than 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel.
- Numbered paragraph 52.31(1)“b”(4)“2” applies only if a retail dealer intends to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel. If a retail dealer does not intend to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel and the product sold and dispensed contains less than 11 percent biodiesel by volume, no error has occurred and the product does not qualify for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

*c. Refundability.* Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*d. Transferability.* The credit may not be transferred to any other person.

*e. Examples.*

EXAMPLE 1: A taxpayer operated four retail motor fuel sites during 2006 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling \$1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE 2: A taxpayer operated two retail motor fuel sites during 2006, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel, and the other site sold 10,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2006 tax year.

EXAMPLE 3: Same facts as in example 2, except the fuel sales occurred in 2009. The taxpayer can claim a biodiesel blended fuel tax credit totaling \$750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

EXAMPLE 4: Same facts as in example 2, except the fuel sales occurred in 2016, and all biodiesel blended fuel sold contains a minimum percentage of 5 percent by volume of biodiesel. The taxpayer can claim a biodiesel blended fuel tax credit totaling \$1,575, which is 35,000 gallons multiplied by four and one-half cents, since the 50 percent biodiesel blended fuel requirement has been eliminated.

**501.31(2) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2024.

EXAMPLE 1: A taxpayer who operates one retail motor fuel site has a fiscal year ending April 30, 2006. The taxpayer sold 60,000 gallons of diesel fuel for the period from May 1, 2005, through April 30, 2006, of which 28,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through April 30, 2006, the taxpayer sold 20,000 gallons of diesel fuel, of which 12,000 gallons

was biodiesel blended fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of \$360 (12,000 gallons multiplied by 3 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006, since more than 50 percent of all diesel fuel sold during the period from January 1, 2006, through April 30, 2006, was biodiesel blended fuel.

**EXAMPLE 2:** A taxpayer who operates one retail motor fuel site has a fiscal year ending June 30, 2006. The taxpayer sold 80,000 gallons of diesel fuel for the period from July 1, 2005, through June 30, 2006, of which 42,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through June 30, 2006, the taxpayer sold 40,000 gallons of diesel fuel, of which 19,000 gallons was biodiesel blended fuel. The taxpayer is not entitled to claim the biodiesel blended fuel tax credit on the taxpayer's Iowa income tax return for the period ending June 30, 2006, since less than 50 percent of all diesel fuel sold during the period from January 1, 2006, through June 30, 2006, was biodiesel blended fuel, even though more than 50 percent of all diesel fuel sold during the period from July 1, 2005, through June 30, 2006, was biodiesel blended fuel.

**EXAMPLE 3:** A taxpayer who operates one retail motor fuel site has a fiscal year ending February 28, 2025. The taxpayer sold 100,000 gallons of diesel fuel for the period from March 1, 2024, through February 28, 2025, of which 60,000 gallons was biodiesel blended fuel containing a minimum percentage of 5 percent by volume of biodiesel. For the period from March 1, 2024, through December 31, 2024, the taxpayer sold 85,000 gallons of diesel fuel, of which 50,000 gallons was biodiesel fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of \$2,250 (50,000 gallons multiplied by 4.5 cents) on the taxpayer's Iowa income tax return for the period ending February 12, 2025, since the credit is computed only on gallons sold through December 31, 2024.

**501.31(3)** *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2016 Iowa Acts, Senate File 2309.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 3043C, IAB 4/26/17, effective 5/31/17; Editorial change: IAC Supplement 11/2/22]

**701—501.32(422) Soy-based transformer fluid tax credit.** Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

**501.32(1)** *Eligibility requirements for the tax credit.* All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

- a. The costs must be incurred after June 30, 2006, and before January 1, 2009.
- b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.
- c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.
- d. The costs of the purchase and replacement must not exceed \$2 per gallon of soy-based transformer fluid used in the transition.
- e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.
- f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

**501.32(2)** *Applying for the tax credit.* An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30

days after the close of the tax year for which the credit is claimed. The application must include the following information:

- a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.
- b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.
- c. The name, address, and tax identification number of the electric utility.
- d. The type of tax for which the credit will be claimed, and the first year in which the credits will be claimed.
- e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

**501.32(3) *Claiming the tax credit.*** After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, Senate File 572.

[ARC 0251C, IAB 8/8/12, effective 9/12/12; Editorial change: IAC Supplement 11/2/22]

### **701—501.33(16,422) Agricultural assets transfer tax credit and custom farming contract tax credit.**

**501.33(1) *Agricultural assets transfer tax credit.*** For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax equal to 5 percent of the rental income received by the owner for cash rental agreements and 15 percent of the rental income received by the owner for commodity share agreements. Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa

finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$6 million. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa finance authority for the agricultural assets transfer tax credit program cannot exceed \$8 million and the amount of the credit issued to an individual taxpayer cannot exceed \$50,000. However, effective December 31, 2017, the amount of tax credits issued by the Iowa finance authority for the agricultural assets transfer tax credit shall revert back to \$6 million.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. However, for any agricultural assets transfer credits originally issued for tax years beginning on or after January 1, 2008, any credit in excess of the tax liability may be credited to the tax liability for the following ten years. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the Iowa finance authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the Iowa finance authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

**501.33(2) Custom farming contract tax credit.** Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa corporation income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa finance authority for the custom farming contract tax credit program cannot exceed \$4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed \$50,000. However, effective December 31, 2017, the Iowa finance authority will no longer issue custom farming contract tax credits.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the Iowa finance authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the Iowa finance authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 422.33; 2014 Iowa Acts, Senate File 2328, sections 60 and 61, as amended by 2014 Iowa Acts, House File 2454; and 2014 Iowa Acts, Senate File 2328, sections 120 and 122.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 1138C, IAB 10/30/13, effective 12/4/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

**701—501.34(15,422) Film qualified expenditure tax credit.** Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for corporation income tax. The tax credit cannot exceed 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

**501.34(1) Qualified expenditures.** A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. For limitations on the amount of labor and personnel expenditures, see Iowa department of economic development 261—paragraph 36.7(2)“b.”
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.

21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available from the film office of IDED.

**501.34(2)** *Claiming the tax credit.* Upon completion of the registered project in Iowa, the taxpayer must submit, in a format approved by IDED prior to production, a listing of the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

**501.34(3)** *Transfer of the film qualified expenditure tax credit.* The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**501.34(4)** *Repeal of film qualified expenditure tax credit.* The film qualified expenditure tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project 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 422.33 as amended by 2012 Iowa Acts, House File 2337, section 34.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.35(15,422) Film investment tax credit.** Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for corporation income tax. The tax credit cannot exceed 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

**501.35(1) Claiming the tax credit.** Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—52.34(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 52.34(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested \$100,000 in a project but the qualified expenditures in Iowa only totaled \$270,000, each investor would receive a tax credit based on a \$90,000 investment amount.

**501.35(2) Transfer of the film investment tax credit.** The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**501.35(3) Repeal of film investment tax credit.** The film investment tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning

prior to January 1, 2012, if the contract or agreement related to a film project 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 422.33 as amended by 2012 Iowa Acts, House File 2337, section 34.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.36(422) Ethanol promotion tax credit.** Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA 137.

**501.36(1) Definitions.** The following definitions are applicable to this rule:

*“Biodiesel gallonage”* means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

*“Biofuel distribution percentage”* means the sum of the retail dealer’s total ethanol gallonage plus the retail dealer’s total biodiesel gallonage expressed as a percentage of the retail dealer’s total gasoline gallonage.

*“Biofuel threshold percentage”* is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

Determination Period	More than 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
2009	10%	6%
2010	11%	6%
2011	12%	10%
2012	13%	11%
2013	14%	12%
2014	15%	13%
2015	17%	14%
2016	19%	15%
2017	21%	17%
2018	23%	19%
2019	25%	21%
2020	25%	25%

*“Biofuel threshold percentage disparity”* means the positive percentage difference between the retail dealer’s biofuel threshold percentage and the retail dealer’s biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

*“Determination period”* means any 12-month period beginning on January 1 and ending on December 31.

*“Ethanol gallonage”* means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

*“Gasoline gallonage”* means the total number of gallons of gasoline sold by the retail dealer during a determination period.

**501.36(2) Calculation of tax credit.**

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate per Gallon 2009-2010	Tax Credit Rate per Gallon 2011	Tax Credit Rate per Gallon 2012-2020
0%	6.5 cents	8 cents	8 cents
0.01% to 2.00%	4.5 cents	6 cents	6 cents
2.01% to 4.00%	2.5 cents	2.5 cents	4 cents
4.01% or more	0 cents	0 cents	0 cents

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—52.43(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer's retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer's retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 52.36(1) is based on more than 200,000 gallons, or 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

f. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**501.36(3) Fiscal year filers.** or taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 52.36(2), paragraph "a." Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. For a taxpayer whose tax year is not on a calendar year basis and that did not claim the ethanol

promotion tax credit on the previous return, the taxpayer may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

**501.36(4) Allocation of tax credit to owners of a business entity.** If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

**501.36(5) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This results in an ethanol promotion tax credit of 6.5 cents times 11,950, or \$776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or \$1,000.

**EXAMPLE 2.** A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons. This consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2010 60,000 gallons of diesel fuel, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This results in an ethanol promotion tax credit of 4.5 cents times 30,900, or \$1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

**EXAMPLE 3.** A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

Site A – 70,000 times 10% equals	7,000
Site B – 70,000 times 10% equals	7,000
Site C – 60,000 times 10% equals	6,000
Site C – 10,000 times 79% equals	7,900
Total	<u>27,900</u>

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit

is computed separately for each motor fuel site, and the ethanol promotion credit equals \$1,813.50, as shown below:

Site A – 7,000 times 6.5 cents equals	\$455.00
Site B – 7,000 times 6.5 cents equals	\$455.00
Site C – 13,900 times 6.5 cents equals	\$903.50
Total	<u>\$1,813.50</u>

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or \$2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of \$2,310 for the fiscal year ending March 31, 2011, as shown below:

30,000 times 6.5 cents equals	\$1,950
8,000 times 4.5 cents equals	360
Total	<u>\$2,310</u>

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of \$1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or \$1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided

by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of \$1,462, as shown below:

Site A – 7,000 times 2.5 cents equals	\$175
Site B – 7,000 times 2.5 cents equals	\$175
Site C – 13,900 times 8 cents equals	\$1,112
Total	\$1,462

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; Editorial change: IAC Supplement 11/2/22]

**701—501.37(422) Charitable conservation contribution tax credit.** Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for corporation income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

**501.37(1) Definitions.** The following definitions are applicable to this rule:

“*Conservation purpose*” means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

“*Qualified organization*” means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

“*Qualified real property interest*” means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

**501.37(2) Computation of the credit.** The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is \$100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as a deduction for charitable contributions for Iowa income tax purposes.

**501.37(3) Claiming the tax credit.** The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, with the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be included with federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be included with the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

**501.37(4) Examples.** The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of \$150,000 to a qualified organization during 2008. The tax credit is equal to \$75,000, or 50 percent of the \$150,000 fair

market value of the real property. The taxpayer cannot claim the \$150,000 as a deduction for charitable contributions on the Iowa corporation income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of \$500,000 to a qualified organization during 2009. The tax credit is limited to \$100,000, which equates to \$200,000 of the contribution being eligible for the tax credit. The remaining amount of \$300,000 (\$500,000 less \$200,000) can be claimed as a deduction for charitable contributions on the Iowa corporation income tax return for 2009.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2700, section 63.

[ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.38(422) School tuition organization tax credit.** For tax years beginning prior to January 1, 2021, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2021, the tax credit is equal to 75 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. For S corporations, partnerships, limited liability companies, estates and trusts where the income is taxed directly to the individual shareholders, partners, members or beneficiaries, an individual may claim the credit. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the S corporation, partnership, limited liability company, estate or trust. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.32(422).

**501.38(1) Amount of tax credit authorized—additional limitation for corporations.**

a. Of the \$7.5 million of school tuition organization tax credits authorized for the 2009 through 2011 calendar years, no more than 25 percent, or \$1,875,000, can be authorized for corporation income tax taxpayers.

b. Of the \$8.75 million of school tuition organization tax credits authorized for 2012 and 2013, no more than 25 percent, or \$2,187,500, can be authorized for corporation income tax taxpayers.

c. Of the \$12 million of school tuition organization tax credits authorized for 2014 through 2018, no more than 25 percent, or \$3 million, can be authorized for corporation income tax taxpayers.

d. Of the \$13 million of school tuition organization tax credits authorized for 2019, no more than 25 percent, or \$3,250,000, can be authorized for corporation income tax taxpayers.

e. Effective July 1, 2020, the prohibition against authorizing more than 25 percent of the total authorized tax credits for corporation income tax purposes was repealed. On or after July 1, 2020, of the total school tuition organization tax credits authorized for a year, any amount can be authorized for corporation income taxpayers.

**501.38(2) Issuance of tax credit certificates.** The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

**501.38(3) Claiming the tax credit.** The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The taxpayer shall not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

This rule is intended to implement Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 5978C, IAB 10/20/21, effective 11/24/21; Editorial change: IAC Supplement 11/2/22]

**701—501.39(15,422) Redevelopment tax credit.** The economic development authority is authorized by the general assembly and the governor to oversee the implementation and administration of the redevelopment tax credit program. Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council and the economic development authority may claim a redevelopment tax credit once the taxpayer has been issued a tax credit certificate for the project by the economic development authority. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for the economic development authority's administration of this program, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**501.39(1) Eligibility for the credit.** The economic development authority is responsible for developing a system for registration and authorization of projects receiving redevelopment tax credits. For more information, see Iowa Administrative Code 261—Chapter 65.

**501.39(2) Amount of the credit.**

*a. Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed is \$1 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credits allowed cannot exceed \$5 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$500,000. For the fiscal year beginning July 1, 2012, the maximum amount of tax credits allowed cannot exceed \$10 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$1 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the economic development authority board but not in excess of the amount established pursuant to Iowa Code section 15.119.

*b. Maximum credit per project.* The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 52.39(2)“a.”

*c. Percentage computation.* The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
- (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).
- (3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.
- (4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

**501.39(3) Claiming the credit.**

*a. Certificate issuance.* Upon completion of the project, the economic development authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.39(4). To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate.

*b. Pro rata share.* If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

*c. Carryforward.* Except as provided in paragraph 52.39(3)“d,” any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

*d. Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the conditions of economic development authority 261—paragraph 65.11(4)“b” are met.

**501.39(4) Transfer of the credit.** The redevelopment tax credit can be transferred to any person or entity. However, a certificate indicating that the credit is refundable is only transferrable to the extent permitted by economic development authority 261—paragraph 65.11(4)“b.”

*a. Submission of transferred tax credit certificate to the department—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit, and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.

*b. Issuance of replacement certificate by the department.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee.

*c. Claiming the transferred tax credit.* The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

**501.39(5) Basis reduction of the redevelopment property.** The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 for which a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).

This rule is intended to implement Iowa Code sections 15.293A, 422.33 and 15.119.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1949C, IAB 4/1/15, effective 5/6/15; Editorial change: IAC Supplement 11/2/22]

**701—501.40(15) High quality jobs program.** Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

**501.40(1) *Research activities credit.*** An eligible business approved under the high quality jobs program is eligible for an additional research activities credit as described in subrule 52.7(4) for awards issued by the Iowa department of economic development prior to July 1, 2010. The eligible business is eligible for the research activities credit as described in subrule 52.7(6) for awards issued by the Iowa department of economic development on or after July 1, 2010.

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality jobs program and the enterprise zone program shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and in subrule 52.7(5) for businesses in enterprise zones, and are not applicable to the research activities credit set forth in subrule 52.7(3).

**501.40(2) *Investment tax credit.*** An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7).

The determination of the new investment eligible for the investment tax credit, the eligibility of a refundable investment tax credit for value-added agricultural product or biotechnology-related projects and the repayment of investment tax credits for the high quality jobs program is the same as set forth in subrule 52.28(2) for the high quality job creation program.

**501.40(3) *Repayment of benefits.*** If an eligible business fails to maintain the requirements of the high quality jobs program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality jobs program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code chapter 15.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.41(15) *Aggregate tax credit limit for certain economic development programs.*** Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed \$185 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2012, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2012, awards made under these economic development programs cannot exceed \$170 million. For fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2014, these programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the high quality jobs program, the redevelopment tax credit program, tax credits for

investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. For fiscal years beginning on or after July 1, 2014, these programs include the assistive device tax credit program, the workforce housing tax incentives program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. The administrative rules for the aggregate tax credit limit for the economic development authority may be found at 261—Chapter 76.

This rule is intended to implement Iowa Code section 15.119 as amended by 2014 Iowa Acts, House File 2448.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—501.42(16,422) Disaster recovery housing project tax credit.** For tax years beginning on or after January 1, 2011, but before January 1, 2015, a disaster recovery housing project tax credit is available for corporation income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The administrative rules of the Iowa finance authority for the disaster recovery housing project tax credit may be found at 265—Chapter 34. The tax credit is repealed effective January 1, 2015.

**501.42(1) Issuance of tax credit certificates.** Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any other person or entity.

**501.42(2) Limitation of tax credits.** The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed \$3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

**501.42(3) Claiming the tax credit.** The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa corporation income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: A corporation whose tax year ends on December 31 incurs \$100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of \$75,000, and \$15,000 of credit can be claimed on each Iowa corporation income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the corporation for the period ending December 31, 2011, is \$10,000, the credit is limited to \$10,000, and the remaining \$5,000 credit cannot be used. If the tax liability for the corporation for the period ending December 31, 2012, is \$25,000, the credit is limited to \$15,000, and the remaining \$5,000 credit from 2011 cannot be used to reduce the tax for 2012.

**501.42(4) Potential recapture of tax credits.** If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance

authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on a corporation income tax return.

This rule is intended to implement Iowa Code sections 16.211, 16.212 and 422.33 as amended by 2014 Iowa Acts, Senate File 2328.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 1665C, IAB 10/15/14, effective 11/19/14; Editorial change: IAC Supplement 11/2/22]

**701—501.43(422) E-15 plus gasoline promotion tax credit.** Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. “E-15 plus gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 138.

**501.43(1) Calculating the credit.**

*a. Amount of credit.* The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2013	3 cents
Gallons sold from January 1 through May 31 and from September 16 through December 31 for the 2014-2024 calendar years	3 cents
Gallons sold from June 1 through September 15 for the 2014-2024 calendar years	10 cents

*b. Claiming the credit with other credits.* A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2011, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

*c. Refundability.* Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*d. Transferability.* The credit may not be transferred to any other person.

**501.43(2) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends prior to December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

**EXAMPLE 1:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

**EXAMPLE 2:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons multiplied by 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending

April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

**EXAMPLE 3:** A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2025. The taxpayer sold 20,000 total gallons of E-15 plus gasoline for the entire period from March 1, 2024, through February 28, 2025. For the period from March 1 through May 31, 2024, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$120 (4,000 gallons multiplied by 3 cents). For the period from June 1 through September 15, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$600 (6,000 gallons multiplied by 10 cents). For the period from September 16 through December 31, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$180 (6,000 gallons multiplied by 3 cents). For the period from January 1 through February 28, 2025, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which occurred after expiration of the credit. The taxpayer is entitled to claim a total E-15 plus gasoline promotion tax credit of \$900 (\$120 plus \$600 plus \$180) on the taxpayer's Iowa income tax return for the period ending February 28, 2025.

**501.43(3) Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.** If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 422.11Y and 422.33 as amended by 2016 Iowa Acts, Senate File 2309.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 3043C, IAB 4/26/17, effective 5/31/17; Editorial change: IAC Supplement 11/2/22]

**701—501.44(422) Solar energy system tax credit.** For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. The credit is available according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.33.

[ARC 5590C, IAB 4/21/21, effective 5/26/21; Editorial change: IAC Supplement 11/2/22]

**701—501.45(422) From farm to food donation tax credit.** A taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit against Iowa corporation income tax according to the same requirements, conditions, and limitations as described in rule 701—304.51(422).

This rule is intended to implement Iowa Code chapter 190B, subchapter I, and section 422.33.

[ARC 6901C, IAB 2/22/23, effective 3/29/23]

**701—501.46(15) Workforce housing tax incentives program.** A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for corporation income tax. The workforce housing tax incentives program replaced the eligible housing enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48. The general assembly has mandated that the economic development authority and the department of revenue adopt rules to jointly administer Iowa Code sections 15.351 to 15.356. In general, the economic development authority is responsible for evaluating whether projects meet the requirements for a workforce housing tax incentives program while the department of revenue administers tax credit claims and transfers.

**501.46(1) Definitions.**

“Costs directly related” means the same as defined in rule 261—48.3(15).

“*Qualifying new investment*” means the same as defined in rule 261—48.3(15).

**501.46(2) Workforce housing tax incentives.** The economic development authority will allocate no more than \$20 million in tax incentives for this program for any fiscal year, \$5 million of which shall be reserved for allocation to qualified housing projects in small cities, as defined in Iowa Code section 15.352(10), that are registered on or after July 1, 2017. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

*a. Sales tax refund.* A housing business may claim a refund of the sales and use tax described in rule 701—258.1(15).

*b. Investment tax credit.*

(1) Computation of the credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project not located in a small city, or 20 percent of the qualifying new investment in a housing project located in a small city.

(2) Allocation of the tax credit to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, 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, estate, or trust.

(3) Refundability. Any tax credit in excess of the taxpayer’s liability for the tax year is not refundable.

(4) Carryforward. Any tax credit in excess of the taxpayer’s liability may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

**501.46(3) Claiming the tax credit—information required.** The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.46(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

**501.46(4) Basis adjustment.** The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For example, if a new housing project had qualifying new investment of \$1 million which resulted in a \$100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be \$900,000.

**501.46(5) Transfer of the credit.**

*a. Submission of transferred tax credit certificate to the department—information required.* Tax credit certificates issued under an agreement entered into pursuant to subrule 52.46(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable.

*b. Issuance of replacement certificate by the department.* Within 30 days of receiving the transferred tax credit certificate and the transferee’s statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

*c. Claiming the transferred tax credit.* A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original

transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

*d. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than the minimum amount established in rule by the economic development authority.

*e. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in subparagraph 52.46(2)“b”(4) shall apply.

**501.46(6) *Repayment of benefits.*** If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of Iowa Code section 15.353. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer’s tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.  
[ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 3837C, IAB 6/6/18, effective 7/11/18; ARC 6398C, IAB 7/13/22, effective 7/1/22; Editorial change: IAC Supplement 11/2/22]

**701—501.47(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after July 1, 2014, and before August 15, 2016.** For projects registered before August 15, 2016, the department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue’s provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—52.18(404A,422). The department of revenue’s provisions for projects registered on or after July 1, 2014, and before August 15, 2016, are found in this rule. The department of cultural affairs’ rules related to this program may be found at 223—Chapter 48.

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue’s provisions for projects registered on or after August 15, 2016, are found in rule 701—52.48(404A,422). The economic

development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). Projects registered on or after July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—52.48(404A,422).

**501.47(1)** *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* Taxpayers that want to claim a corporation income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are available on the department of cultural affairs' website. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

**501.47(2)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

**501.47(3)** *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

*a. Type of property and services eligible.* In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be "qualified rehabilitation expenditures" in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered "qualified rehabilitation expenditures" if they are for "structural components," as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

*b. Effect of financing sources on eligibility of expenditures.* Qualified rehabilitation expenditures do not include expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

**501.47(4)** *Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.* After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

*a. Claiming the credit.* For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed or the corporation income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 52.47(4) "d" below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended return is being filed.

*b. Information required.* The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 52.47(4) "c" below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.47(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

*c. Refundability.* A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. See department of cultural affairs' 223—Chapter 48. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot select to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 52.47(5).

*d. Carryforward.* If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 52.47(4) "b," the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 52.47(4) "a," the taxpayer must utilize the entire credit within five years of project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

*e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

**501.47(5)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a

nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

*d. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 52.47(4) "d" shall apply.

**501.47(6) Appeals.** Challenges to an action by the department of revenue related to tax credit transfers, claiming tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.33.

[ARC 1968C, IAB 4/15/15, effective 5/20/15; ARC 2928C, IAB 2/1/17, effective 3/8/17; Editorial change: IAC Supplement 11/2/22]

**701—501.48(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after August 15, 2016.** The economic development authority is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the economic development authority, the department of cultural affairs and the department of revenue adopt rules as necessary to administer Iowa Code chapter 404A. In general, the department of revenue is responsible for administering tax credit transfers and processing and auditing tax returns that include tax credits claimed on returns. For the economic

development authority's rules on the credit program, see 261—Chapter 49. For the department of cultural affairs' rules on the credit program, see 223—Chapter 48.

**501.48(1)** *Program transition.* 2016 Iowa Acts, House File 2443, made several changes to the credit program, including transferring primary responsibility for the program's administration from the department of cultural affairs to the economic development authority. Projects registered prior to August 15, 2016, remain under the purview of the department of cultural affairs, with assistance from the department of revenue. For department of revenue rules related to projects registered prior to August 15, 2016, see rules 701—52.18(404A,422) and 701—52.47(404A,422).

**501.48(2)** *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* For rules on the application, registration, and agreement process, see economic development authority rules, 261—Chapter 49.

**501.48(3)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the economic development authority following project completion, up to the amount specified in the agreement between the taxpayer and the economic development authority. For more information on the credit computation, see economic development authority rules, 261—Chapter 49. The amount remains subject to audit by the department of revenue when the credit is claimed on the taxpayer's tax return.

**501.48(4)** *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in Iowa Code section 404A.1(7) and rule 261—49.5(404A) of economic development authority rules. In the event of an audit, the department of revenue evaluates whether expenditures comply with the agreement between the economic development authority and the eligible taxpayer, as well as with applicable statutes and rules, including Internal Revenue Code Section 47 and its related regulations.

**501.48(5)** *Completion of the qualified rehabilitation project and claiming the tax credit.* After the economic development authority verifies the taxpayer's eligibility for the tax credit, the economic development authority shall issue a tax credit certificate. For more information on credit certificate issuance, see economic development authority rules, 261—Chapter 49.

*a. Claiming the credit.* For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed or the corporation income tax return for any year within the five years following the year of project completion. Taxpayers that elect to delay claiming the credit to a later year's return as described in this paragraph are subject to the carryforward limitations described in paragraph 52.48(5) "d" below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

*b. Information required.* The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 52.48(5) "c" below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.48(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

*c. Refundability.* A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the economic development authority. See the economic development authority's rule 261—49.15(404A). Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or

vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 52.48(6).

*d. Carryforward.* If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 52.48(5)“b,” the amount in excess of the taxpayer’s tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 52.48(5)“a,” the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

*e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the estate or trust.

**501.48(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year that the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee’s name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the tax credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

*d. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 52.48(4) “d” shall apply.

**501.48(7) Appeals.** Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.33.

[ARC 2928C, IAB 2/1/17, effective 3/8/17; Editorial change: IAC Supplement 11/2/22]

**701—501.49(15,422) Renewable chemical production tax credit program.** An eligible business that has received a renewable chemical production tax credit certificate from the economic development authority may claim a tax credit against corporation income tax. The credit is equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in Iowa from biomass feedstock by the eligible business during a given production year, subject to the limitations described in Iowa Code sections 15.315 through 15.322, 261—Chapter 81, and this rule. The economic development authority’s rules on eligibility for the credit may be found in 261—Chapter 81.

**501.49(1) Application and agreement for the credit.** To be eligible for the tax credit, the eligible business must apply to and enter into an agreement with the economic development authority. The economic development authority’s rules on the application and agreement process may be found in 261—Chapter 81.

**501.49(2) Computation of the amount of credit and certificate issuance.** Upon establishing that all requirements of the program and the agreement have been fulfilled and verifying the taxpayer’s eligibility for the tax credit, the economic development authority calculates the credit. Then the economic development authority issues the related tax credit certificate to the eligible business stating the amount of the renewable chemical production tax credit that the eligible business may claim. A tax credit certificate shall not be issued by the economic development authority prior to July 1, 2018. The economic development authority’s rules on credit certificate issuance may be found in 261—Chapter 81.

**501.49(3) Claiming the tax credit.**

*a. Claiming the credit, generally.* To claim the credit, a taxpayer must include one or more tax credit certificates with the taxpayer’s tax return for the tax year during which the eligible business was issued the tax credit certificate or certificates. If the taxpayer claiming the credit has already filed a return for the tax year for which the credit certificate was issued, the taxpayer may claim the credit on an amended return. The taxpayer must file the amended return within the statute of limitations applicable to such amended return. No tax credit may be claimed under this program by a taxpayer prior to September 1, 2018.

*b. Claiming the credit of a pass-through entity.* To claim the credit of an eligible business that is a pass-through entity, an individual taxpayer must claim the credit on the tax return for the tax year during which the eligible business received the tax credit certificate. Such tax year may be either the tax year of the eligible business or of the individual.

EXAMPLE: A partnership has a fiscal year of September 2017 through August 2018. The partnership receives a renewable chemical production tax credit certificate under this program in July 2018, which is during the partnership’s 2017 tax year. A partner in the partnership files individual returns on a calendar year basis, which means that the credit was issued in the partner’s 2018 tax year. That partner may file

an amended 2017 tax return to claim the credit based on the partnership's tax year, or that partner may claim the credit on the partner's 2018 tax return based on the partner's own tax year.

*c. Information required.* The tax credit certificate shall include 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.

*d. Allocation to the individual owners of the entity or beneficiaries of an estate or trust.* An individual may claim the credit of a partnership, limited liability company, S corporation, cooperative organized under Iowa Code chapter 501 and filing as a partnership for tax purposes, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based on the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, cooperative, estate, or trust.

*e. Refundability.* Any 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.

*f. Transferability.* Tax credit certificates shall not be transferred to any other person.

*g. Rescission and recapture.* The tax credit certificate, unless rescinded by the economic development authority, shall be accepted by the department of revenue, subject to any conditions or restrictions placed upon the face of the tax credit certificate by the economic development authority and subject to the limitations of the program. Should the economic development authority reduce, terminate, or rescind any tax credits issued under the program, the eligible business may be subject to the repayment or recapture of any credits already claimed. The economic development authority's rules related to the program may be found in 261—Chapter 81. The repayment of tax credits or recapture by the department of revenue shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

This rule is intended to implement Iowa Code section 422.33(22)  
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**701—501.50(15E,422) Hoover presidential library tax credit.** A Hoover presidential library tax credit is available according to the same requirements, conditions, and limitations as described in rule 701—42.57(15E,422) and 261—Chapter 43.

This rule is intended to implement Iowa Code sections 15E.364 and 422.33(31) as enacted by 2021 Iowa Acts, House File 588, sections 1 and 3.

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◊ Two or more ARCs

CHAPTER 502  
DETERMINATION OF NET INCOME

[Prior to 12/17/86, Revenue Department[730]]

[Prior to 11/2/22, see Revenue Department[701] Ch 53]

**701—502.1(422) Computation of net income for corporations.** Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 701—53.2(422) to 701—53.13(422) and 701—53.17(422) to 701—53.26(422). The remaining provisions of this rule and 701—53.14(422) to 701—53.16(422) shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if the corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all those years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. The tax liability for a short period is computed by multiplying the taxable income for the short period by 12 and dividing the result by the number of months in the short period. The tax is determined on the resulting total as if it were the taxable income, and the tax computed is divided by 12 and multiplied by the number of months in the short period. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

This rule is intended to implement Iowa Code section 422.35.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11; Editorial change: IAC Supplement 11/2/22]

**701—502.2(422) Net operating loss carrybacks and carryovers.** In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

**502.2(1) Additions to income.**

*a.* Refunds of federal income taxes due to net operating loss and credit carrybacks 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 or excess credit occurs. The federal refund shall still accrue for tax periods beginning on or after January 1, 2009, even though the Iowa net operating loss carryback is not allowed.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received. The federal refund due to any net operating loss carryback for federal income tax purposes for tax years beginning on or after January 1, 2009, must still be reflected even though the Iowa net operating loss carryback is not allowed.

*b.* Iowa income tax deducted on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

*c.* Interest and dividends received in the year of the loss on federally tax-exempt securities shall be reflected as additions to income in the year of the loss.

**502.2(2) Reductions of income.**

*a.* Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

*b.* Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

*c.* Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

**502.2(3)** If a corporation does business both within and without Iowa, it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

*a.* After making the adjustments to federal taxable income as provided in 53.2(1) and 53.2(2), the total net allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 701—54.5(422), 54.6(422) and 54.7(422). The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

*b.* The net operating loss attributable to Iowa, as determined in rule 701—53.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision for tax years beginning prior to August 6, 1997. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa 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 15 taxable years. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

*c.* For tax years beginning after August 5, 1997, but before January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), incurred in a presidentially declared disaster area by a corporation engaged in a small business or in the trade or business of farming must be carried back 3 taxable years and carried forward 20 taxable years. All other net operating losses attributable to Iowa must be carried back 2 taxable years and carried forward 20 taxable years. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa 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. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa corporation income tax return filed with the department.

*d.* For tax years beginning on or after January 1, 1998, but before January 1, 2009, for 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 including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss. 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) of the Internal Revenue Code for the two-year or three-year carryback in lieu of the five-year carryback must be attached to the Iowa return or the Form IA 1139 Application for Refund Due to the Carryback of Corporate Farming Losses, to show why the carryback was two years or three years instead of five years. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

When the taxpayer carries on more than one trade or business within a corporate shell or files a consolidated Iowa corporation income tax return, the income or loss from each trade or business must be combined to determine the amount of net operating loss that exists and whether it is a net operating loss from the trade or business of farming.

**EXAMPLE 1.** The taxpayer carries on the trade or business of farming and also the trade or business of trucking for entities outside the corporate shell. For the tax year, the taxpayer had a net operating loss

from farming of \$25,000 and net income from trucking of \$10,000 for a net operating loss for the year of \$15,000 which is a net operating loss from the trade or business of farming which may be carried back 5 tax years and forward 20 tax years.

EXAMPLE 2. The taxpayer carries on the trade or business of farming and the trade or business of construction. For the tax year, the taxpayer had income from farming of \$12,000 and a net operating loss from construction of \$45,000 for a net operating loss for the year of \$33,000 which is a net operating loss from the trade or business of construction which may be carried back 2 tax years and forward 20 tax years.

EXAMPLE 3. The taxpayer carries on the trade or business of farming and the trade or business of construction. During the tax year, the taxpayer had a net operating loss of \$18,000 from farming and a net operating loss of \$9,000 from construction for a total net operating loss of \$27,000. Of this net operating loss, \$18,000 is from farming and may be carried back 5 years and forward 20 years and \$9,000 is from construction and may be carried back 2 years and forward 20 years.

*e.* For tax years beginning on or after January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—53.2(422), shall be carried forward 20 taxable years. The net operating loss cannot be carried back to a previous tax year. The federal refund due to any carryback of a federal net operating loss must still be included in income as provided in subrule 53.2(1), paragraph “a.”

**502.2(4)** No part of a net operating loss for a year which the corporation was not subject to the imposition of Iowa corporation 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. To be deductible, a net operating loss must be sustained from that portion of the corporation’s trade or business carried on in Iowa.

**502.2(5)** No part of a net operating loss may be carried back or carried forward if the carryback or carryforward would be disallowed for federal income tax purposes under Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code. This provision is effective for tax years beginning on or after January 1, 1989.

**502.2(6)** The carryover of Iowa net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of Sections 381 through 386 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Iowa income tax purposes, the limitation on an Iowa net operating loss carryover must be determined as though a separate income tax return was filed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; Editorial change: IAC Supplement 11/2/22]

### **701—502.3(422) Capital loss carryback.**

**502.3(1)** Capital losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net allocable and apportionable income.

*a.* For accrual-basis taxpayers the federal income tax refund shall not be accrued to the loss year but rather treated as a reduction in federal income tax paid in the carryback year.

*b.* Cash-basis taxpayers shall include the federal income tax refund in Iowa taxable income in the year received.

*c.* Where the taxpayer files a separate Iowa corporation income tax return but files as part of a federal consolidated income tax return, the portion of the federal refund due to a capital loss carryback attributable to the taxpayer shall be calculated by computing the federal tax deduction in the carryback year as follows:

Separate Company Income - Separate Company Capital Loss Carryback	×	Consolidated Federal Tax	×	50%
Sum of the Incomes of Profit Companies - Sum of Separate Company Capital Loss Carrybacks to Profit Companies		after Capital Loss Carryback		

**502.3(2)** When the carryback year has both allocable and apportionable capital gains, the capital loss carryback shall be applied pro rata on a percentage basis of the specific gain to the total gains.

EXAMPLE: Assume a taxpayer has a 1973 capital loss carryback available of \$2000. The loss would be applied in the following manner:

1970	1970	1970
<u>Total Capital Gain</u>	<u>Allocable Gain</u>	<u>Apportionable Gain</u>
\$16,000	\$4,000	\$12,000
Allocable gain	-\$4,000	
Total capital gain	-\$16,000	= ¼ or 25% of carryback to allocable gain
1970 allocable capital gain after application of loss carryback: \$4,000 less (\$2,000 × 25%) = \$3,500 net allocable capital gain.		

This rule is intended to implement Iowa Code sections 422.35 and 422.37.  
[Editorial change: IAC Supplement 11/2/22]

**701—502.4(422) Net operating and capital loss carrybacks and carryovers.** If the taxpayer, for tax periods beginning prior to January 1, 2009, has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the new operating loss offset against any remaining income.

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; Editorial change: IAC Supplement 11/2/22]

**701—502.5(422) Interest and dividends from federal securities.** See rule 701—40.2(422) for a discussion of the exempt status of interest and dividends from federal securities.

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions.** Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable 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. See rule 701—40.3(422) for a listing of obligations of the state of Iowa and its political subdivisions, the interest from which is exempt from Iowa corporation income tax. For the tax treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in rule 701—40.3(422), see rule 701—40.52(422).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal tax under Section 852(b)(5) of the Internal Revenue Code

and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under Section 852(b)(4)(B) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, add, to the extent not already included, income from the sale of obligations of the state of Iowa and its political subdivisions. 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 taxable income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition from Iowa corporation income tax.

This rule is intended to implement Iowa Code section 422.35 as amended by 2001 Iowa Acts, House File 715.

[Editorial change: IAC Supplement 11/2/22]

**701—502.7(422) Safe harbor leases.** For tax years ending after January 1, 1981, deductions in determining federal taxable income for sale-leaseback agreements taken as a result of the application of Section 168(f)(8) of the Internal Revenue Code shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of Sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense, and the lessee shall add rental expense. When the deduction for depreciation is not allowed under a previous provision of this rule, the lessee shall be allowed a deduction for depreciation on any property involved in a sale-leaseback agreement. This depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of a sale-leaseback agreement shall be deducted in determining Iowa taxable income. The lessee shall deduct interest income and the lessor shall deduct rent income. Each lessor and lessee corporation shall include a copy of federal Form 6793 in its Iowa corporation income tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.8(422) Additions to federal taxable income.**

**502.8(1)** Reserved.

**502.8(2) *Percentage depletion.*** For tax years beginning on or after January 1, 1986, add the amount that percentage depletion of an oil, gas, or geothermal well computed under Section 613 of the Internal Revenue Code is in excess of cost depletion computed under Section 611 of the Internal Revenue Code.

**502.8(3) *Charitable contributions relating to the charitable conservation contribution tax credit.*** For tax years beginning on or after January 1, 2008, a taxpayer who claims a charitable conservation contribution tax credit in accordance with rule 701—52.37(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

**502.8(4) *Charitable contributions relating to school tuition organizations.*** For tax years beginning on or after July 1, 2009, a taxpayer who claims a school tuition organization tax credit in accordance with rule 701—52.38(422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution to the school tuition organization for which the tax credit is claimed for Iowa tax purposes.

**502.8(5) *Charitable contributions relating to the endow Iowa tax credit.*** For tax years beginning on or after January 1, 2010, a taxpayer who claims an endow Iowa tax credit in accordance with rule 701—52.23(15E,422) cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

**502.8(6) *Charitable contributions related to the from farm to food donation tax credit.*** For tax years beginning on or after January 1, 2014, a taxpayer who claims a from farm to food donation tax credit in accordance with rule 701—52.45(422,85GA,SF452) cannot claim a deduction for charitable

contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.35 and 2013 Iowa Acts, Senate File 452. [ARC 1303C, IAB 2/5/14, effective 3/12/14; Editorial change: IAC Supplement 11/2/22]

**701—502.9(422) Gains and losses on property acquired before January 1, 1934.** Where 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. *City National Bank of Clinton v. Iowa State Tax Commission*, 251 Iowa 603, 102 N.W.2d 381 (1960).

If as a result of this provision a basis is to be used for purposes of Iowa corporation 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 422.35. [Editorial change: IAC Supplement 11/2/22]

**701—502.10(422) Work opportunity tax credit and alcohol and cellulosic biofuel fuels credit.** Where provided for in the Internal Revenue Code, as detailed below, a deduction shall be allowed for the amount of credit to the extent that the credit increased federal taxable income.

**502.10(1)** For tax years beginning on or after January 1, 1977, the amount of credit allowable for federal work opportunity tax credit as provided for in Section 51 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

**502.10(2)** For tax periods beginning on or after January 1, 1980, the amount of credit allowable for the federal alcohol and cellulosic biofuel fuels credit as provided for in Section 40 of the Internal Revenue Code shall be a deduction from Iowa taxable income to the extent the credit increased income.

This rule is intended to implement 2011 Iowa Code Supplement section 422.35 as amended by 2012 Iowa Acts, Senate File 2328. [ARC 0337C, IAB 9/19/12, effective 10/24/12; Editorial change: IAC Supplement 11/2/22]

**701—502.11(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, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2), is allowed a deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984.

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 904.

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 chapter 913 applies.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2) is allowed a deduction for 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued during the tax year for work done in Iowa for employees first hired after January 1, 1989, who meet the above criteria.

**502.11(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 Iowa division of job service of the department of employment services, 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.

**502.11(2)** The term “small business corporation” includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

*a.* A small business corporation shall not have had more than 20 full-time equivalent positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the 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.* A small business corporation 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.* A small business corporation 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.

**502.11(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.

**502.11(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.

**502.11(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.

**502.11(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 corporation 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.

**502.11(7)** For tax years ending after July 1, 1990, a taxpayer who did not qualify for the additional deduction for wages paid or accrued for work done in Iowa by certain individuals set forth above is allowed an additional deduction of 65 percent not to exceed \$20,000 of the first 12 months of wages paid or accrued for work done in Iowa for employees first hired on or after July 1, 1990, if the new employee is:

a. An individual domiciled in this state at the time of the 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 904, division IX.

b. 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 907A.1 applies.

The additional deduction is not 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 Iowa division of job service of the department of employment services, the additional deduction is 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.

The taxpayer must 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 whom the taxpayer claims the additional deduction for wages.

If the employee for whom an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer must file an amended return adding back the additional deduction for wages. The amended return must state the name and social security number of the employee who failed to successfully complete a probationary period.

**502.11(8)** 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. The conditions set out in the unnumbered paragraphs under paragraph "b" of subrule 53.11(7) also apply to the deduction for the hiring of certain individuals in this subrule.

This rule is intended to implement 2011 Iowa Code Supplement section 422.35 as amended by 2012 Iowa Acts, Senate File 2247.

[ARC 0337C, IAB 9/19/12, effective 10/24/12; Editorial change: IAC Supplement 11/2/22]

**701—502.12(422) Federal income tax deduction.** "Federal income taxes" shall mean those income taxes paid or payable to the United States Government and shall not include taxes paid or payable or taxes deemed to have been paid to a foreign country. *Construction Products, Inc. v. Briggs, State Board of Tax Review*, Case No. 25, February 1, 1972. "Federal income taxes" includes the federal alternative minimum tax. For tax years beginning on or after January 1, 1990, and before January 1, 1996, "federal income taxes" includes the federal environmental tax. Because the federal environmental tax is deducted in computing federal taxable income and Iowa Code subsection 422.35(4) only allows a deduction for 50 percent of the federal income tax paid or accrued, the federal environmental tax deducted in computing federal taxable income must be added to federal taxable income.

**502.12(1) Cash basis taxpayer.**

a. When a taxpayer is reporting on the cash basis, 50 percent of the amount of federal income taxes actually paid during the taxable period is allowable as a deduction, whether or not such taxes represent

the preceding year's tax or additional taxes for prior years. Fifty percent of a federal tax refund shall be reported as income in the year received.

*b.* A corporation reporting on the cash basis may deduct 50 percent of the federal income tax on the accrual basis if an election is made upon filing the first return. If the corporation claims an accrual deduction on the first return, it shall be considered as an election. Once the election is made, the corporation may change the basis of federal income tax deduction only with the permission of the director. If a change in accounting method is approved or required by the Internal Revenue Service, the director is deemed to have approved the change in the basis of the federal tax deduction.

*c.* The federal income tax deduction during the transitional period following a change in accounting method from cash to accrual is the accrual deduction in the year of change, plus any cash payment of federal income tax paid in the year of the change for the tax year prior to the change in accounting method, reduced by a refund of federal income tax paid for the tax year prior to the year of the change in accounting method received in the year of the change. For the year of change and years subsequent to the year of the change, the deduction shall be the accrual deduction plus any federal income tax paid for a tax year prior to the year of change as a result of an amended federal return or federal audit, reduced by any refund of federal income tax paid for a tax year prior to the year of the change in accounting method.

*d.* The federal income tax deduction during the transitional period following a change in accounting method from accrual to cash is the cash deduction in the year of change, plus any cash payment of federal estimated income tax paid in the year prior to the year of the change for the year of the change. Any refund of federal income tax from a tax year prior to the year of the change received in the year of the change or in a subsequent year is properly accrued to the prior tax year. Any payment of federal income tax due to an amended return or federal audit for a tax year prior to the year of the change made in the year of the change or a subsequent year is accrued to that prior tax year. (For information on amended returns, see 701—subrule 52.3(4).)

**502.12(2)** *Accrual basis taxpayer.*

*a.* The amount of federal income tax to be allowed as a deduction for an accrual basis taxpayer is limited to 50 percent of the actual federal income tax liability for that year.

*b.* Additional federal income taxes and refunds of federal income taxes (except for 53.12(2) “c”) shall be a part of the tax liability accrued for such prior years.

*c.* Refunds resulting from net operating loss carrybacks, investment credit carrybacks, unused excess profits tax credits, and similar items shall be included in income for Iowa corporation income tax purposes in the year in which such refunds are legally accrued.

**502.12(3)** Reserved.

**502.12(4)** *Consolidated federal income tax allocation.*

*a.* When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the allowable deduction shall be 50 percent of the consolidated federal income tax liability allocable to that corporation. The allocation of the consolidated federal income tax shall be determined as follows: The net consolidated federal income tax liability is multiplied by a fraction, the numerator of which is the taxpayer's federal taxable income as computed on a separate basis, and the denominator of which is the total federal taxable incomes of each corporation included in the consolidated return. If the computation of the taxable income of a member results in an excess of deductions over gross income such member's taxable income shall be zero. *Sibley State Bank v. Bair, State Board of Tax Review*, Docket No. 182, May 26, 1978. *Internorth, Inc., and Northern Propane Gas Company v. Iowa State Board of Tax Review, Iowa Department of Revenue and Gerald D. Bair, Director of Revenue*, 333 N.W.2d 471 (Iowa 1983).

*b.* If a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the federal income tax deduction allowed the Iowa taxpayer shall not exceed 50 percent of the consolidated federal income tax liability.

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.13(422) Iowa income taxes and Iowa tax refund.** Iowa corporation income taxes paid or accrued during the tax year as may be applicable under the method of filing are permissible deductions for federal corporation income tax purposes, but are not permissible deductions for purposes of determining Iowa net taxable income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa corporation income tax purposes. Refunds of Iowa income tax to the extent that the refunds were included in the determination of federal taxable income shall be subtracted from federal taxable income, only to the extent that a deduction for Iowa income taxes was disallowed on a prior Iowa return. Iowa income tax refunds resulting from Iowa refundable tax credits are not allowed as a deduction for Iowa corporation income tax purposes.

EXAMPLE: Corporation A reports income on a cash basis and made Iowa estimated payments of \$2,000 during the 2003 tax year. The \$2,000 of estimated payments was claimed as a deduction for federal income tax purposes, but was not allowed as a deduction for Iowa tax purposes. The 2003 Iowa return reported a tax liability of \$1,600. Corporation A had \$2,000 of Iowa estimated payments and a \$500 ethanol blended gasoline tax credit, and received a \$900 Iowa tax refund in 2004. Of the \$900 refund reported as income on the federal return, Corporation A will be allowed a \$400 (\$2,000 - \$1,600) reduction on the Iowa return for 2004.

This rule is intended to implement Iowa Code section 422.35.  
[Editorial change: IAC Supplement 11/2/22]

**701—502.14(422) Method of accounting, accounting period.** The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for corporation tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

This rule is intended to implement Iowa Code section 422.35.  
[Editorial change: IAC Supplement 11/2/22]

**701—502.15(422) Consolidated returns.**

**502.15(1) Definition.** The term "common parent" as used in these rules shall have the same general meaning as when used in the federal income tax regulation. However, where the common parent is not subject to the Iowa income tax because of the provisions of 701—subrule 52.1(1) or because of specific exemption under Iowa Code section 422.34, the common parent shall designate as the agent for the affiliated group, one of its subsidiaries subject to the Iowa income tax and shall notify the director of the same in writing. Where the common parent has designated one of its subsidiaries to act as agent for the affiliated group, reference in this rule to "common parent" shall mean the designated agent.

Unless otherwise distinctly expressed, the terms used in this rule shall have the same meaning as when used in a comparable context in the federal income tax regulations for consolidated returns except for determining whether an affiliated group had exercised its privilege of filing a consolidated return. All references to the "commissioner" or "district director" in the federal regulations shall be construed to mean the director for purposes of the Iowa rules.

*a.* An affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year. Each corporation which is subject to the Iowa corporation income tax and has been a member during any part of the taxable year for which the consolidated return is to be filed must consent (as provided in paragraph 53.15(1) "d") to the filing of the consolidated return.

*b.* If a group wishes to exercise its privilege of filing a consolidated return, the consolidated return must be filed not later than the date prescribed by Iowa Code section 422.21 (including extensions of time) for the filing of the common parent's return. The consolidated return may not be withdrawn after the last day for filing (including extensions of time) but the group may change the basis of its return at any time prior to the last day.

*c.* The consolidated return shall be made on Form IA-1120 for the group by the common parent corporation. The common parent corporation of the group must attach a copy of the federal Form 851 (Affiliations Schedule) to the consolidated return.

d. If a group wishes to exercise its privilege of filing a consolidated return, each subsidiary must consent to the filing of the consolidated return for the year. The subsidiaries must consent to the filing of an Iowa consolidated return by joining in the filing of an Iowa consolidated return on or before the due date (including any extensions of time). If both separate and consolidated returns are filed on or before the due date (including any extensions of time), the latest returns filed will be considered as the taxpayers' election in regards to the filing of separate or consolidated returns.

e. The common parent, for all purposes other than the making of the consent required by subrule 53.15(1) "a," shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. No subsidiary shall have authority to act for or to represent itself in any matter. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. If a subsidiary has ceased to be a member of the group and if the subsidiary files written notice of the cessation with the director, then upon request of the subsidiary, the director will furnish it with a copy of any notice of deficiency in respect of the tax for a consolidated return year for which it was a member. The filing of the written notification and request by a corporation shall not have the effect of limiting the scope of the agency of the common parent.

f. Unless the director agrees to the contrary, an agreement entered into by the common parent extending the time within which a notice of deficiency may be issued, or a levy or a proceeding in court begun in respect of the tax for a consolidated return year shall be applicable to each corporation which was a member of the group during any part of the taxable year and to each corporation, the income of which was included in the consolidated return for the taxable year, notwithstanding that the liability of the corporation is subsequently computed on the basis of a separate return under these rules.

g. If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the director of that fact and designate another member to act as its agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If this notice is not given by the common parent, the remaining members may, subject to the approval of the director, designate another member to act as agent, and notice of the designation shall be given to the director. Until a notice in writing designating a new agent has been approved by the director, any notice of deficiency or other communications mailed to the common parent shall be considered as having been properly mailed to the agent of the group. If the director has reasons to believe that the existence of the common parent has terminated, the director may, if deemed advisable, deal directly with any member in respect of its liability.

**502.15(2)** *When director may require consolidated return.* In accordance with the provisions of rule 701—53.15(422), the director may require a consolidated return for those members of an affiliated group of corporations which would be eligible to elect to consolidate their incomes under Iowa Code section 422.37 if the filing of separate returns for such corporations would improperly reflect the taxable incomes of said corporations or of said group.

**502.15(3)** *Discontinuance of filing consolidated returns.*

a. An affiliated group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it is allowed to discontinue filing consolidated returns, or unless a federal consolidated return is not filed by the group.

b. In the event that a consolidated filing for Iowa tax purposes is discontinued for any reason, the common parent shall so notify the department by letter. The mere filing of separate returns does not, in itself, constitute sufficient notice.

c. The following constitute factors for determining when consolidated filing for Iowa tax purposes can be discontinued:

(1) If the filing of separate returns will more clearly disclose the taxable income of each member of the affiliated group. Corporations should note that such determination is vested in the director. Therefore, corporations should make application to the director within a reasonable time prior to the due date of the return (including extensions of time). Normally, this would be not later than 90 days prior to said due

date. The application should set forth in detail the taxable income on both a consolidated and separate basis together with the reasons why separate returns would more clearly disclose Iowa taxable income. The mere fact that the consolidated tax liability is greater or less than the combined separate liabilities is not, of itself, a ground for discontinuance of consolidated filing.

(2) If one or more of the members of the affiliated group cease to be subject to Iowa corporate income tax, consolidation may be discontinued in whole or in part.

(3) If one or more of the members of the affiliated group change in character so that they are no longer taxable under the Iowa corporate income tax law.

EXAMPLE: Common parent A is a manufacturer. Subsidiary B is a company engaged in small loans. A and B file consolidated Iowa returns. In a subsequent taxable year, B changes its business by surrendering its small loan company license and obtains a state bank charter. Even though A and B continue to file federal consolidated returns, B is now a corporation exempt from tax under Iowa Code section 422.34. Therefore A and B should discontinue filing Iowa consolidated returns.

(4) If the affiliated group is purchased by another corporation or affiliated group so that after the purchase the stockholders own less than 50 percent of the fair market value of all classes of outstanding stock of the new corporation or affiliated group then the old group must discontinue filing Iowa consolidated returns. The new group may exercise its privilege of filing a consolidated return.

*d.* If a group is allowed to discontinue filing consolidated returns for any taxable year, then each member of the affiliated group subject to Iowa tax must file a separate return for such year on or before the last day prescribed by law (including extensions of time) for the filing of the consolidated return for such year.

*e.* A group shall be considered as remaining in existence, for the purposes of the Code, in accordance with the rules prescribed in Treasury Regulation Section 1.1502-75(d).

*f.* If a consolidated return erroneously includes the income of one or more corporations which were not members of the group at any time during the consolidated return year, the tax liability of such corporations will be determined upon the basis of separate returns (or a consolidated return of another group, if paragraph 53.15(1)“c” or 53.15(3)“a” applies) and the consolidated return will be considered as including only the income of the corporations which were members of the group during that taxable year.

*g.* In any case in which amounts have been assessed and paid upon the basis of a consolidated return, and where the tax liability of one or more of the corporations included in the consolidated return is to be computed in the manner described in paragraph 53.15(3)“f,” the amounts so paid shall be allocated between the group composed of the corporations properly included in the consolidated return and each of the corporations, whose tax liability is to be computed on a separate basis (or on the basis of a consolidated return of another group) in such manner as the corporations which were included in the consolidated return, and where the tax liability of one or more of the corporations included absence of an agreement, the tax liability of the group shall be allocated under subrule 53.12(4).

*h.* The taxable year of members of the group, including rules for changing the parent’s taxable year, income to be included in the separate returns, and the time for making separate returns for periods not included in a consolidated return for the purposes of the Iowa Code, shall be in accordance with the rules prescribed in Treasury Regulation Section 1.1502-76(a)-(c).

**502.15(4) Determination of consolidated Iowa income.**

*a.* Unless otherwise provided by these rules or manifestly inconsistent with the provisions of the Iowa Code, the consolidated taxable income for a consolidated return year under the Iowa Code shall be determined in the same manner and under the same procedures, including intercompany adjustments and eliminations, as are required by the federal income tax regulations in the case of a federal consolidated return.

*b.* If the Iowa affiliated group differs in its members from the federal affiliated group, such nonqualifying member(s) shall not be considered includable corporations and all computations hereunder shall be made as if such member(s) were not members of the affiliated group. The consolidated federal income tax liability shall be allocated between includable corporations and nonincludable corporations by subrule 53.12(4).

c. The apportionment provisions of Iowa Code section 422.33 shall be taken into account by an affiliated group doing business within and without Iowa. All members of an affiliated group which join in the filing of an Iowa consolidated return shall determine the portion of the consolidated net income earned within and without Iowa by the same method. All intercompany transactions shall be eliminated in the determination of the apportionment factors.

The gross receipts of each corporation which joins in the filing of an Iowa consolidated corporation income tax return shall be included in the computation of the business activity ratio. The gross receipts of each corporation shall be included in the numerator of the business activity ratio to the extent that it has nexus in Iowa and its gross receipts are not eliminated by intercompany adjustments and are considered Iowa gross receipts by rules 701—54.2(422) to 701—54.8(422). The gross receipts of each corporation shall be included in the denominator of the business activity ratio to the extent its gross receipts are not eliminated by intercompany adjustments.

d. On or after January 1, 2016, see 701—Chapter 242 for requirements of an out-of-state business to be a part of an affiliated group filing an Iowa consolidated return that 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.

**502.15(5) Schedules.** Supporting schedules shall be filed with the consolidated return. The statement of gross income and deductions and other schedules required for each corporation shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily ascertained. A column shall also be provided giving effect to any eliminations and adjustments. The items included in the column for eliminations and adjustments should be symbolized to identify contra items affected, and suitable explanations appended, if necessary. Similar schedules shall contain in columnar form a reconciliation of retained earnings for each corporation, together with a reconciliation of consolidated retained earnings. Consolidated balance sheets at the beginning and close of the taxable year of the group shall accompany the consolidated return prepared in a form similar to that required for other schedules. Transactions with a subsidiary which is not included as part of the Iowa consolidated return shall not be considered as intercompany transactions for elimination purposes in computing the consolidated Iowa taxable income for the return period.

**502.15(6) Liability for tax.**

a. Except as provided in paragraph 53.15(6)“b,” the common parent corporation and each subsidiary subject to the Iowa corporation income tax which was a member of the affiliated group during any part of the consolidated return year shall be severally liable for the tax for the year computed in accordance with Iowa Code chapter 422, on or before the due date (not including extensions of time) for the filing of the consolidated return for that year.

b. If a subsidiary has ceased to be a member of the group and if the cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the director may make an assessment and collection of the deficiency from the former subsidiary in an amount not exceeding the portion of the deficiency which the director may determine to be allocable to it. If the director makes assessment and collection of any part of a deficiency from the former subsidiary, then for purposes of any credit or refund of the amount collected from the former subsidiary the agency of the common parent under the provisions of paragraph 53.15(1)“e” shall not apply.

c. No agreement entered into by one or more members of the affiliated group with any other member of the group shall in any case have the effect of reducing the liability prescribed under this subrule.

**502.15(7) Computation of contribution.** Computation of a separate corporation’s contribution to consolidated income or net operating loss subject to Iowa tax for purposes of net operating loss carryover and carryback limitations shall be as follows:

$$\frac{A}{B} \times C \times \frac{D}{A} + E = \text{separate corporation contribution to consolidated income subject to Iowa tax.}$$

A = Separate corporation gross sales within and without Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated net income subject to apportionment.

D = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

E = Separate corporation income allocable to Iowa.

**502.15(8) Limitations on net operating loss carryover and carryback.**

*a. Definitions.*

(1) The term “separate return year” means a year in which a corporation filed a separate return and also a year for which it joined (or was required to join) in the filing of an Iowa consolidated return by another affiliated group.

(2) The term “separate return limitation year” means any separate return year of a member of the group or of a predecessor of the member.

*b. Limitation on net operating loss carryover.* A net operating loss from a separate return limitation year of a member of the group may be carried over only to the extent that the member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7). A net operating loss carryover from a separate return limitation year cannot create or increase a consolidated net operating loss which is carried back for tax years beginning prior to January 1, 2009.

A consolidated net operating loss may be carried over to a consolidated return year without limitation even though in the carryover year the affiliated group contains members which were not members of the group in the loss year.

If a member of the affiliated group in the loss year leaves the group through the sale of its stock or because it is now a corporation exempt from tax under Iowa Code section 422.34, its share, as determined by subrule 53.15(7), of the unabsorbed consolidated net operating loss at the end of the consolidated return year during which the member left the group or became exempt from tax may not be carried forward to a subsequent consolidated return.

*c. Limitation on net operating loss carryback for tax periods beginning prior to January 1, 2009.* A member’s share of an Iowa consolidated net operating loss as computed under subrule 53.15(7) must be carried back to a separate return year, unless the affiliated group elected to carry the net operating loss forward. However, if the member was not in existence in the carryback year but had been a member of the group for every tax year of its existence, its share of the Iowa consolidated loss may be carried back to a separate return year of the common parent.

If a consolidated net operating loss is carried back to a consolidated return year and all members of the affiliated group are the same in the carryback year as in the loss year, the consolidated net operating loss may be carried back without limitation. If there are members of the affiliated group in the loss year which were not members in the carryback year, then the formula in subrule 53.15(7) must be used to determine the portion of the consolidated net operating loss attributable to the members in existence in the carryback year and which may be carried back. Any member of the affiliated group which was a member of the loss-year affiliated group which has been a member of the group since its formation will be regarded as having been a member of the group in the carryback year even though it was not then in existence. A merger or liquidation of members within the affiliated group will be disregarded in determining whether there has been a change in the group between the loss year and the carryback year.

The amount of net operating loss that may be carried back from a separate return year to a consolidated return year is limited to the extent that the former member contributed to the Iowa consolidated taxable income as computed under subrule 53.15(7).

This rule is intended to implement Iowa Code section 422.35 as amended by 2009 Iowa Acts, Senate File 483, and section 422.37.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 3085C, IAB 5/24/17, effective 6/28/17; Editorial change: IAC Supplement 11/2/22]

**701—502.16(422) Federal rulings and regulations.** In determining whether “taxable income,” “net operating loss deduction” or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised discretionary powers as prescribed by statute which call for an alternative method for determining “taxable income,” “net operating loss deduction,” or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.17(422) Depreciation of speculative shell buildings.**

**502.17(1)** For tax years beginning on or after July 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 taxable income in order to deduct depreciation under this rule.

**502.17(2)** On sale or other disposition of the speculative shell building, the taxpayer must report on the taxpayer’s Iowa corporation income tax return the same gain or loss reported on the taxpayer’s federal corporation 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.

**502.17(3)** For the purposes of this rule, the term “speculative shell building” means a building as defined in Iowa Code section 427.1, subsection (27) “c.”

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.18(422) Deduction of multipurpose vehicle registration fee.** For tax years beginning on or after January 1, 1992, and before January 1, 2005, corporations may claim a deduction for 60 percent of the amount of the registration fee paid for a multipurpose vehicle under Iowa Code section 321.124, subsection 3, paragraph “h.” In order to qualify for this deduction, no part of the multipurpose vehicle registration fee may have been deducted as an ordinary and necessary business expense.

For tax years beginning on or after January 1, 2005, the deduction for Iowa corporation income tax for multipurpose vehicle registration fees is the same as allowed under Section 164 of the Internal Revenue Code for federal tax purposes.

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.19(422) Deduction of foreign dividends.** For tax years beginning on or after January 1, 1992, corporations may claim a deduction based on percentage of ownership as set forth in Section 243 of the Internal Revenue Code for foreign dividends including Subpart F income as defined in Section 952 of the Internal Revenue Code. See *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance*, 505 U.S. 71, 120 L.Ed 59, 112 S.Ct. 2365 (1992).

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.20(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. No social security tax credit is allowed on the Iowa corporation income tax return.

This rule is intended to implement Iowa Code section 422.35 as amended by 1995 Iowa Acts, chapter 152.

[Editorial change: IAC Supplement 11/2/22]

**701—502.21(422) Deductions related to the Iowa educational savings plan trust.** For tax years beginning on or after January 1, 2016, certain qualifying organizations may establish Iowa education savings plan trust accounts as participants, as described in Iowa Code chapter 12D. Taxpayers may make contributions to such qualifying organizations so that the organization can deposit the contribution into the organization's Iowa education savings plan trust account. However, for Iowa income tax purposes, a taxpayer must add back any portion of the federal charitable contribution deduction allowed for a contribution to a qualifying organization, to the extent that the taxpayer designated that any part of such contribution be used for the direct benefit of a dependent of a shareholder or for the benefit of any other specific person chosen by the taxpayer.

This rule is intended to implement Iowa Code section 422.35 as amended by 2016 Iowa Acts, chapter 1107.

[ARC 3664C, IAB 2/28/18, effective 4/4/18; Editorial change: IAC Supplement 11/2/22]

**701—502.22(422) Additional first-year depreciation allowance.**

**502.22(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 corporation 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.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1:** Taxpayer acquired a \$100,000 qualifying asset on January 1, 2002, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2002. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2002. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2002.

**EXAMPLE 2:** Taxpayer acquired a \$1,000,000 qualifying asset on January 1, 2002, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2005, for \$500,000. Using the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2002-2005. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2005 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2002-2005. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2005 on the sale of the asset.

Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2005.

**502.22(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 corporation income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa corporation 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.

See 701—subrule 40.60(2), paragraph “a,” for examples illustrating how this subrule is applied.

*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.

**502.22(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 corporation 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.

The following nonexclusive examples illustrate how this subrule applies:

**EXAMPLE 1:** Taxpayer acquired a \$100,000 qualifying asset on January 10, 2008, which has a five-year life for depreciation purposes. Using the bonus depreciation provision in Section 168(k) of the Internal Revenue Code, taxpayer was entitled to a \$44,000 depreciation deduction on the federal return for 2008. For Iowa purposes, taxpayer must use the MACRS depreciation method which results in a \$20,000 depreciation deduction on the Iowa return for 2008. Therefore, a \$24,000 (\$44,000 – \$20,000) increase to net income relating to this depreciation adjustment must be made on the Iowa return for 2008.

**EXAMPLE 2:** Taxpayer acquired a \$1,000,000 qualifying asset on January 10, 2008, which has a ten-year life for depreciation purposes. This asset was sold on December 31, 2011, for \$500,000. Using

the bonus depreciation provision, taxpayer claimed \$677,440 of depreciation deductions on the federal returns for 2008-2011. This results in a basis for this asset of \$322,560 (\$1,000,000 – \$677,440), and a gain of \$177,440 (\$500,000 – \$322,560) on the federal return for 2011 on the sale of the asset.

Using the MACRS depreciation method, taxpayer claimed \$539,200 of depreciation deductions on the Iowa returns for 2008-2011. This results in a basis for this asset of \$460,800 (\$1,000,000 – \$539,200), and a gain of \$39,200 (\$500,000 – \$460,800) on the Iowa return for 2011 on the sale of the asset. Therefore, a decrease to net income of \$138,240 (\$177,440 – \$39,200) relating to this gain adjustment must be made on the Iowa return for 2011.

**502.22(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 corporation 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.

**502.22(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 corporation 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 subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.35 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; Editorial change: IAC Supplement 11/2/22]

## **701—502.23(422) Section 179 expensing.**

**502.23(1) *In general.*** Iowa taxpayers that 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.

**502.23(2) *Claiming the deduction.***

*a. Timing and requirement to follow federal election.* A taxpayer that 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 that takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer that 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. See rule 701—40.65(422) for the section 179 rules applicable to individuals and other noncorporate entities, and see rule 701—59.24(422) for the section 179 rules applicable to 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	1,020,000	2,550,000	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

*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 53.23(2) “c” for applicable limitations.

EXAMPLE: Taxpayer, a corporation, 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. For corporations, 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, a corporation, 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 for corporations for 2018). 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 an owner of that pass-through. See subrule 53.23(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) Special information for 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 53.23(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 53.23(2) "e"(1)"2."

EXAMPLE: A, Inc. (a corporation doing business exclusively in Iowa) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C, which also 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 701—numbered paragraph 40.65(2) "e"(1)"1." C passes through 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) to A, Inc. A, Inc. 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, Inc. is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A, Inc. received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A, Inc. is eligible for the special election referenced in 53.23(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 allowable Iowa section 179 deduction may be carried forward as described in paragraph 53.23(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 53.23(2)“e,” or in subrule 53.23(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

*h. Difference 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.

**502.23(3) Section 179 deduction received from a pass-through entity.** In some cases, an 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 53.23(2)“c” for a given year. The 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 by a corporation (both C and S corporations) or an entity subject to the corporate income tax 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, a corporation (both C and S corporations) or an entity subject to the corporate income 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—40.65(422) for rules applicable to individuals and other noncorporate entities, and see rule 701—59.24(422) for rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the corporation or entity subject to the corporate income tax by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the corporation or entity subject to the corporate income tax exceeds the federal section 179 deduction limitation for that year, the corporation or other 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 a corporation or entity subject to the corporate income tax.* A corporation or entity subject to the corporate income tax that makes this special election may not claim an Iowa section 179 deduction for any assets the corporation 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 corporation 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, Inc., a corporation doing business in Iowa, places in service \$20,000 worth of section 179 assets in tax year 2019 and claims the deduction for the full amount for federal purposes. A, Inc. is also a member of B, LLC, an entity that has elected to be taxed as a partnership for federal purposes and does not do any business in Iowa. B, LLC also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$150,000 of that deduction through to A, Inc. For federal purposes, A, Inc. has a total of \$170,000 in section 179 deductions. Because A, Inc. has section 179 deductions from a pass-through that exceed the Iowa limitation for 2019, A, Inc. is eligible for the special election. A, Inc. makes the special election and claims the maximum Iowa section 179 deduction of \$100,000 on the amount passed through from B, LLC. Under the special election, A, Inc. will be allowed to deduct the remaining \$50,000 passed through from B, LLC over the next five years, as described in paragraph 53.23(3)“e.” However, because A, Inc. made the special election, A, Inc. will be required to depreciate the entire \$20,000 cost of the assets A, Inc. placed in service in 2019.

*d. Calculating the special election.* A corporation or other entity subject to the corporate income tax that elects to take advantage of the special election must first add together all section 179 deductions which the corporation or other entity received from all relevant pass-through entities. The corporation or other 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 corporation or other entity will be permitted to deduct (special election deduction) in future years.

*e. Special election deduction.*

(1) Calculation. The remaining amount from paragraph 53.23(3)“d” must be separated into five equal shares.

(2) Claiming the special election deduction. The corporation or other 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 53.23(2)“g.”

EXAMPLE: D, Inc., a corporation doing business in Iowa, 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. D, Inc. claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning the corporation will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, D, Inc. is eligible for the \$100,000 deduction carried forward under the election, but the corporation only has \$50,000 in business income. The deduction is limited to business income, so the corporation can only use \$50,000 of the deduction in this year. However, D, Inc. 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 422.35 as amended by 2019 Iowa Acts, Senate File 220.

[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; ARC 4517C, IAB 6/19/19, effective 7/24/19; Editorial change: IAC Supplement 11/2/22]

**701—502.24(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 corporation 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 purposes 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.

**502.24(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 corporation 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 53.24(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**502.24(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 corporation 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 corporation 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 corporation 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 corporation 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 corporation income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.35.

[Editorial change: IAC Supplement 11/2/22]

**701—502.25(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.**

**502.25(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 that is an Iowa-based business may exclude, to the extent included in federal taxable 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—52.34(15,422). An Iowa-based business is a business whose commercial domicile as defined in Iowa Code section 422.32(3) is in Iowa.

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—52.34(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 corporation which is domiciled in Iowa. If this same corporation receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, the corporation cannot exclude this income on the Iowa corporation income tax return because the corporation has claimed the film qualified expenditure tax credit.

**502.25(2) *Projects registered on or after July 1, 2009.*** For tax years beginning on or after July 1, 2009, a taxpayer that is an Iowa-based business 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 corporation income tax return for each of the tax years 2010-2013.

**502.25(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 53.25(2), the taxpayer may continue to exclude \$2,500 of income on the Iowa corporation 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 422.35 as amended by 2012 Iowa Acts, House File 2337, section 35.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; Editorial change: IAC Supplement 11/2/22]

**701—502.26(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal taxable income, the amount of the biodiesel production refund described in rule 701—250.1(423).

This rule is intended to implement Iowa Code section 422.35.

[ARC 9821B, IAB 11/2/11, effective 12/7/11; ARC 5915C, IAB 9/22/21, effective 10/27/21; Editorial change: IAC Supplement 11/2/22]

**701—502.27(422) Like-kind exchanges of personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020.**

**502.27(1) *In general.*** Public Law 115-97, Section 13303, repealed the deferral of gain or loss from exchanges of like-kind personal property for federal purposes under Section 1031 of the Internal Revenue Code. This federal repeal applies to exchanges completed after December 31, 2017, unless the taxpayer began the exchange by transferring personal property or receiving replacement personal property on or before that date. Iowa did not conform to this federal repeal for Iowa corporation income tax purposes for tax periods beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020, Iowa generally conforms to the federal treatment of gain or loss from exchanges of like-kind personal property, but eligible taxpayers may elect the treatment that applied under prior federal law for Iowa purposes. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal treatment for these exchanges, and no special election is available. This rule governs exchanges of like-kind personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020. This rule does not apply to exchanges completed during any tax year beginning on or after January 1, 2020.

**502.27(2) *Qualification.*** Section 1031 of the Internal Revenue Code in effect on December 21, 2017, and any applicable federal regulations govern whether transactions involving the disposition and acquisition of personal property qualify for Iowa corporate income tax purposes as a like-kind exchange of personal property subject to the deferral of gain or loss and also govern the date and tax period during which an exchange is considered completed. The treatment of such transactions as a like-kind exchange for Iowa corporate income tax purposes is either mandatory or permissive depending on the date the like-kind exchange is completed.

*a. Like-kind exchanges completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019.* Transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed after December 31, 2017, but before

tax periods beginning on or after January 1, 2019, are required to be treated as a like-kind exchange for Iowa corporate income tax purposes.

*b. Like-kind exchanges completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020.* For tax periods beginning on or after January 1, 2019, Iowa is conformed to the federal repeal of deferral of gain or loss from exchanges of like-kind personal property, so the federal and Iowa treatment of such transactions under Section 1031 of the Internal Revenue Code will generally be the same. However, transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020, may at the election of the taxpayer be treated as a like-kind exchange for Iowa corporate income tax purposes. The election is made by completing the necessary worksheets and forms and making the required adjustments on the Iowa return as described in subrule 53.27(3). No special attachment or statement is required. The election only applies to the transactions involved in the like-kind exchange, and the taxpayer may elect or not elect to treat other qualifying transactions as a like-kind exchange for Iowa purposes.

**502.27(3) Calculation and Iowa adjustments.** A taxpayer required to or electing to treat qualifying transactions as a like-kind exchange for Iowa tax purposes must make certain Iowa calculations and adjustments on forms and worksheets made available on the department's website. The IA 8824 Worksheet described in this subrule need not be included with the Iowa return but must be kept with the taxpayer's records. The taxpayer is responsible for providing documentation at the department's request to substantiate a like-kind exchange under this rule.

*a. Like-kind exchange calculation.* The taxpayer must complete Parts I and II of the IA 8824 Worksheet to compute the Iowa recognized gain, if any, the Iowa deferred gain or loss, and the Iowa basis of the like-kind personal property received in the like-kind exchange.

EXAMPLE 1: X, a corporation engaged in commercial farming and filing on a calendar-year basis, trades a tractor with a fair market value (FMV) of \$25,000 along with \$75,000 in cash to Y for a new tractor with an FMV of \$100,000. For purposes of this example it is assumed that the tractor trade occurs in 2019 and qualifies as a like-kind exchange and that X elects such treatment for Iowa corporate income tax purposes under paragraph 53.27(2) "b." At the time of the trade, the adjusted basis of X's old tractor is \$0 for federal tax purposes and is \$13,680 for Iowa tax purposes. X realizes a gain for Iowa purposes on the exchange of the old tractor in the amount of \$11,320 (\$100,000 FMV of new tractor - \$75,000 cash paid - \$13,680 Iowa adjusted basis of old tractor). Because X did not receive any cash or other property that was not like-kind, or assume any liabilities from Y, the entire amount of X's \$11,320 realized gain qualifies for deferral, so X recognizes \$0 of gain on the exchange for Iowa tax purposes. As a result, X's basis in the new tractor for Iowa tax purposes is \$88,680 (\$13,680 Iowa adjusted basis of old tractor + \$75,000 cash paid by X).

*b. Iowa nonconformity adjustment.*

(1) The taxpayer must complete Part III of the IA 8824 Worksheet to adjust for the difference between any recognized Iowa gain from the exchange as calculated on the IA 8824 Worksheet, Part II, and any gain or loss (including gain or loss recaptured as ordinary income) recognized on the taxpayer's federal return.

EXAMPLE 2: Assume the same facts as given in Example 1. Because the tractor trade occurred in 2019, it will not qualify as a like-kind exchange for federal tax purposes but will instead be treated as two separate transactions: a sale of the old tractor and a purchase of the new tractor. X recognizes a gain for federal tax purposes on the sale of the old tractor in the amount of \$25,000 (\$25,000 sales price of old tractor - \$0 federal adjusted basis of old tractor), the entire amount of which is recaptured as ordinary income because of prior depreciation. X reports the \$25,000 of income on the federal return. X is required to report the same \$25,000 as income on the Iowa return but is also allowed a \$25,000 subtraction on the same Iowa return because X's recognized gain for Iowa tax purposes is \$0 as calculated in Example 1. X's nonconformity adjustment of -\$25,000 must be reported on the Iowa return in the manner prescribed on the IA 8824 Worksheet.

(2) If the total recognized federal gain is reported using the installment sale method under Section 453 of the Internal Revenue Code, the total amount of any Iowa nonconformity adjustment related to

that federal gain must be claimed over the same installment period, and the proportion of the total Iowa nonconformity adjustment claimed for each tax year shall equal the same proportion that the federal gain reported for that tax year bears to the total amount of federal gain that will ultimately be reported for all tax years resulting from the disposition of the personal property. The taxpayer must complete an IA 8824 Worksheet for each tax year that an Iowa nonconformity adjustment is claimed.

*c. Cost recovery adjustments.*

(1) The taxpayer must complete the IA 4562A to account for any differences between the federal and Iowa cost recovery deductions related to the like-kind personal property involved in the like-kind exchange, including if the taxpayer's basis in the like-kind personal property received is different for federal and Iowa purposes, or if the taxpayer claimed additional first-year depreciation or a section 179 deduction for federal purposes on the like-kind property received in the exchange. See rule 701—53.22(422) for requirements related to the disallowance of additional first-year depreciation for Iowa corporate income tax purposes. See rule 701—53.23(422) for the section 179 limitations imposed under the Iowa corporate income tax.

(2) Treasury Regulation §1.168(i)-6 prescribes rules related to the calculation of depreciation for certain assets involved in a like-kind exchange, but a taxpayer may elect to not have those rules apply pursuant to Treasury Regulation §1.168(i)-6(i). A taxpayer may choose to make a similar election under Treasury Regulation §1.168(i)-6(i) for Iowa tax purposes with regard to a like-kind exchange under this rule if the personal property otherwise would have qualified for such federal election notwithstanding the fact that no like-kind exchange occurred for federal purposes or the fact that no election was actually made for federal tax purposes in accordance with Treasury Regulation §1.168(i)-6(j). The election is made by calculating depreciation for Iowa tax purposes on the personal property involved in the like-kind exchange using the method described in Treasury Regulation §1.168(i)-6(i) on the timely filed Iowa return, including extensions, for the same tax year that the like-kind exchange was completed. No special attachment or statement is required.

EXAMPLE 3: Assume the same facts as given in Examples 1 and 2. X elects additional first-year depreciation on the new tractor and claims a depreciation deduction on the federal return of \$100,000 (100 percent of X's federal basis). X is required to add back the total amount of the federal depreciation on the Iowa return because Iowa does not allow additional first-year depreciation. But X is permitted deductions for regular depreciation on the new tractor with an Iowa basis of \$88,680 (\$13,680 carryover basis from old tractor + \$75,000 excess basis from cash paid) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). See rule 701—53.22(422) for more information on the disallowance of additional first-year depreciation.

EXAMPLE 4: Assume the same facts as given in Examples 1 and 2. X elects to expense the entire cost of the new tractor under Section 179 of the Internal Revenue Code and claims a deduction on the federal return of \$100,000. X is also required to claim the section 179 deduction on the new tractor for Iowa tax purposes pursuant to subrule 53.23(2). However, the amount that represents the carryover basis from the old tractor (\$13,680) is not eligible for the deduction under Section 179(d)(3) of the Internal Revenue Code, so the cost of the new tractor that is eligible for the section 179 deduction for Iowa purposes is only \$75,000 (excess basis from cash paid). This is the amount of section 179 deduction that X must claim on the Iowa return, subject to the applicable Iowa dollar limitation and reduction limitations in rule 701—53.23(422). Because X is the taxpayer who placed the new tractor in service, X is permitted deductions for regular depreciation on the carryover basis in the new tractor (\$13,680) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k).

This rule is intended to implement 2019 Iowa Acts, chapter 152 [House File 779], section 11.  
[ARC 4614C, IAB 8/14/19, effective 9/18/19; Editorial change: IAC Supplement 11/2/22]

**701—502.28(422) Broadband infrastructure grant exemption.**

**502.28(1) Broadband infrastructure grant exemption, generally.** For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and

upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

**502.28(2) Definitions.**

“Facilitate” shall have the same meaning as defined in Iowa Code section 8B.1.

“Grant” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

**502.28(3) Limitation on certain refund claims.** For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.

[ARC 5606C, IAB 5/5/21, effective 6/9/21; Editorial change: IAC Supplement 11/2/22]

**701—502.29(422) Interest expense deduction adjustments.** For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes, for tax year 2018 (subrule 53.29(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 53.29(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 53.29(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

**502.29(1) Definitions.** The following terms apply to the interpretation and application of this rule.

“Current-year business interest expense” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“Excess business interest expense” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“Iowa partnership” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“Iowa S corporation” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“Non-Iowa partnership” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“Non-Iowa S corporation” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

**502.29(2) Tax year 2018.** For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. *In general.* For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer’s additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments

in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 53.29(3) for more information about these 2019 adjustments.

*b. Special rules for partnerships and S corporations.*

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa's nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity's own Iowa return and the reduction to the partner's or shareholder's share of the entity's income will be included in the all source modifications line of the partners' or shareholders' Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership's non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity's IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships which were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expenses passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K, received from the non-Iowa partnership.

EXAMPLE 2: ABC, Inc. is a corporation doing business in Iowa and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. ABC, Inc. is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore ABC, Inc. did not receive a 2018 IA 1065 Schedule K-1 from P2, ABC, Inc. is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on ABC, Inc.'s 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation. See Example 3 in 701—subrule 40.85(2) for an example of how Iowa shareholders of non-Iowa S corporations should report the business interest expense deduction allocated to them from the S corporation.

**502.29(3) Tax year 2019.** For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

*a. Applicable limitation.* For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers

are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 3: XYZ Corp. has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, XYZ Corp.'s business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, XYZ Corp.'s Iowa business interest expense deduction for the year is limited to \$30,000. XYZ Corp. will report this difference by making a \$20,000 adjustment on IA 101, line 3 (XYZ Corp. may have additional adjustments on this line if the current-year federal deduction included amounts carried forward from 2018).

*b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019.* To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 53.29(2)"a" (in general), subparagraph 53.29(2)"b"(1) (Iowa partnerships and S corporations), or numbered paragraph 53.29(2)"b"(2)"1" (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation in 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 53.29(2)"b"(2)"2."

EXAMPLE 4: QRS, Inc. is a partner in P under the same facts described in Example 1 above. For tax year 2019, QRS, Inc. completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to QRS, Inc. from P in 2018 on QRS, Inc.'s 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing QRS, Inc.'s 2019 Iowa income. The same add-back would be required if this scenario was applied to the facts in Example 2 above.

**502.29(4) Tax years beginning on or after January 1, 2020.** For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

*a. Current-year business interest expense.* For tax years beginning on or after January 1, 2020, a taxpayer's current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under IRC Section 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the IRC Section 163(j) limitation.

*b. Carryforward.*

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Excess business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 5: In 2019, QRS, Inc. had \$100,000 in current-year business interest expense. QRS, Inc.'s business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 53.29(3)"a." In 2020, QRS, Inc. is again subject to an IRC Section 163(j) limitation and is not permitted

to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, QRS, Inc. may deduct all of the company's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of QRS, Inc.'s disallowed Iowa interest expense carried over from 2019. QRS, Inc. must complete the IA 163 in order to calculate the company's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on QRS, Inc.'s 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of "disallowed business interest expense." Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 53.29(4)"b"(1). All prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

EXAMPLE 6: In 2020, QRS, Inc. has \$100,000 in current-year business interest expense. For federal purposes, QRS, Inc. is subject to the IRC Section 163(j) limitation. QRS, Inc. deducts \$70,000 in business interest expense on QRS, Inc.'s 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, QRS, Inc. deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, QRS, Inc. has \$50,000 in current-year business interest expense. For federal purposes, QRS, Inc. is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. QRS, Inc. must add the federal carryforward amount (\$5,000) back on the company's 2021 Iowa return, limiting QRS, Inc.'s 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

*c. Consolidated groups.* Corporations that were included on a federal consolidated return but that either file separate returns for Iowa purposes or file an Iowa consolidated return that does not include all members of the federal consolidated group are required to recalculate their proper current-year business interest expense deduction as described in paragraph 53.29(4)"a," and the amount of any prior-year disallowed business interest expense carryforward which must be added back for Iowa purposes as described in paragraph 53.29(4)"b," for the separate entity or Iowa consolidated group by completing pro forma federal interest expense deduction forms for the separate entity or Iowa consolidated group. Treas. Reg. Section 1.163(j)-4(d) and any other applicable federal regulations or guidance govern how Iowa consolidated groups should make this pro forma calculation. For more information about the election to file Iowa consolidated returns and group membership requirements, see rule 701—53.15(422).

(1) Departure from group. In the event that a member leaves the consolidated group, both the newly separated member and the remaining group shall be required to include any carryforward amounts allocated to them under Treas. Reg. Section 1.163(j)-5(b)(3)(iii) in their respective Iowa incomes in the year or years the separate company or group actually deducts those amounts for federal purposes.

(2) Carryforwards from separate return limitation years (SRLY). A consolidated group is not permitted to deduct any disallowed business interest expense carryforward amount of a member arising in a SRLY for Iowa purposes and must add back such amounts on the Iowa return in the same year in which the consolidated group is permitted to deduct the SRLY carryforward amount for federal purposes. See 26 Treas. Reg. Section 1.163(j)-5(d) for more information about the federal treatment of these carryforward amounts.

#### **502.29(5) Partners and partnerships.**

*a. Partnership-level adjustments.* For tax years beginning on or after January 1, 2020, partnerships that file an Iowa income tax return for a tax year in which the partnership is subject to the IRC Section 163(j) limitation for federal purposes are permitted to deduct all current-year business interest expense

at the partnership level in that tax year. See 701—paragraph 40.85(5) “a” for more information about the calculation and reporting of partnership-level adjustments.

*b. Partner-level adjustments.*

(1) Interest expense from Iowa partnerships. Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in 701—paragraph 40.85(5) “a” and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner’s federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) Interest expense from non-Iowa partnerships. For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner’s basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 1.63(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner’s basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 1.63(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that were deducted for Iowa, but not for federal, purposes due to Iowa’s nonconformity with IRC Section 163(j).

**502.29(6) S corporation adjustments.** For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. S corporations should calculate their entity-level business interest expense deduction for Iowa purposes under the provisions of this rule. See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code section 422.35(27).  
[ARC 5733C, IAB 6/30/21, effective 8/4/21; Editorial change: IAC Supplement 11/2/22]

**701—502.30(422) COVID-19 grant exclusion.**

**502.30(1) Definitions.** For purposes of this rule:

“Administering agency” means the economic development authority, the Iowa finance authority, or the department of agriculture and land stewardship.

“Grant recipient” means a person who applies for and is issued a qualifying COVID-19 grant by an administering agency.

“Issued” means the approval of the grant recipient’s application and amount for a qualifying COVID-19 grant by an administering agency, regardless of when the grant funds were paid by the administering agency.

**502.30(2) Qualifying COVID-19 grant programs.**

*a.* The department is responsible for determining whether a grant program provides “qualifying COVID-19 grants” as defined in Iowa Code section 422.7(62). In making this determination, and for purposes of the definition of “qualifying COVID-19 grant,” a grant program is “created to primarily provide COVID-19 related financial assistance to economically impacted individuals and businesses located in this state” if that grant program, at the time of its inception, was intended by the administering agency to provide a majority (more than 50 percent) of its financial assistance to or for the benefit of businesses that are doing business in Iowa or are deriving income from sources within Iowa, and that are economically affected by the COVID-19 pandemic.

*b.* The administering agency shall notify the director of the existence of any grant program it believes may be a qualifying COVID-19 grant program. Upon such notification, the department will request from the administering agency the information necessary to determine whether that program is a

qualifying COVID-19 grant as defined in Iowa Code section 422.7(62) and this rule. The administering agency shall provide the department with the requested information within the time frame prescribed by the department in its request. Failure to provide the requested information to the department shall prevent the department from determining that the grant program is a qualifying COVID-19 grant. Grant programs not specifically listed below in paragraph 502.30(2) “c” are not qualifying COVID-19 grants and are not eligible for the exclusion provided in this rule, even if that program may otherwise meet the definition of “qualifying COVID-19 grant” in Iowa Code section 422.7(62).

c. The following is an exhaustive list of programs that have been identified by the department as qualifying COVID-19 grants, including a general description of each program’s grant recipients, that may qualify for the exclusion from Iowa net income under subrule 502.30(3):

- (1) Beef up Iowa program administered by the department of agriculture and land stewardship. Grant recipient is Iowa State University.
- (2) Iowa beginning farmer debt relief fund administered by the Iowa finance authority. Grant recipients include Iowa beginning farmers.
- (3) Iowa biofuels relief program administered by the economic development authority. Grant recipients include Iowa biodiesel and ethanol producers.
- (4) Iowa county fairs relief fund administered by the economic development authority. Grant recipients include Iowa county and district fairs.
- (5) Iowa COVID-19 business disruption relief program administered by the economic development authority. Grant recipients include Iowa bars, taverns, breweries, distilleries, wineries, and other similar drinking establishments.
- (6) Iowa COVID-19 targeted small business sole operator fund administered by the economic development authority. Grant recipients include Iowa targeted small businesses.
- (7) Iowa disposal assistance program administered by the department of agriculture and land stewardship. Grant recipients include Iowa pork and egg producers.
- (8) Iowa hospital COVID-19 relief fund administered by the economic development authority. Grant recipients include Iowa hospitals.
- (9) Iowa livestock producer relief fund administered by the economic development authority. Grant recipients include Iowa livestock producers.
- (10) Iowa movie theatre relief grant program administered by the economic development authority. Grant recipients include Iowa movie theaters.
- (11) Iowa nonprofit recovery fund administered by the economic development authority. Grant recipients include Iowa nonprofit organizations.
- (12) Iowa renewable fuel retail recovery program administered by the department of agriculture and land stewardship. Grant recipients include Iowa fuel retailers.
- (13) Iowa restaurant and bar relief grant program administered by the economic development authority. Grant recipients include Iowa bars, breweries, brewpubs, distilleries, wineries, and restaurants.
- (14) Iowa small business relief grant program administered by the economic development authority. Grant recipients include Iowa small businesses.
- (15) Iowa small business utility disruption prevention program administered by the economic development authority. Grant recipients include Iowa small businesses and small nonprofit organizations.
- (16) Local produce and protein program administered by the department of agriculture and land stewardship. Grant recipients include Iowa schools, early childcare centers, specialty crop producers, and food hubs.
- (17) Meat processing expansion and development program administered by the department of agriculture and land stewardship. Grant recipients include Iowa meat and poultry processing businesses and employees and Iowa livestock producers.
- (18) Pack the pantry program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food pantries.

(19) Pass the pork program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

(20) Turkey to table program administered by the department of agriculture and land stewardship. Grant recipients include Iowa food banks.

(21) Iowa bowling center relief fund administered by the economic development authority. Grant recipients include Iowa for-profit bowling centers.

(22) Iowa charter bus relief program administered by the economic development authority. Grant recipients include for-profit charter bus companies with a vehicle fleet registered in Iowa.

(23) Iowa sports entertainment relief program administered by the economic development authority. Grant recipients include certain for-profit and nonprofit sports teams with a home venue located in Iowa.

(24) Iowa fitness center relief program administered by the economic development authority. Grant recipients include for-profit, nonprofit, and local government-owned fitness centers located in Iowa.

**502.30(3) Excluding qualifying COVID-19 grants from Iowa net income.**

*a. Generally.* A grant recipient may subtract a qualifying COVID-19 grant when calculating Iowa net income if all of the following apply:

(1) The grant was issued as part of a qualifying COVID-19 grant program identified in paragraph 502.30(2)“c.”

(2) The grant was issued on or after March 17, 2020, and on or before December 31, 2021.

(3) The grant funds were included in the grant recipient’s net income for a tax year ending on or after March 17, 2020, but beginning before January 1, 2024. The grant may only be subtracted to the extent it is included in the grant recipient’s net income for that qualifying tax year. A qualifying COVID-19 grant that is exempt from federal income tax, and thus not included in the grant recipient’s Iowa net income, does not qualify for an additional subtraction on the grant recipient’s Iowa return.

*b. Third-party payee of grant funds.* A third-party payee of qualifying COVID-19 grant funds is not eligible for this exemption from Iowa income. If the proceeds of a qualifying COVID-19 grant are paid to someone other than the grant recipient, only the grant recipient on whose behalf the grant proceeds were paid may qualify for this exemption from Iowa income.

*c. Repayment.* Grant funds that were repaid to the administering agency for any reason are not eligible for this exemption from Iowa income.

*d. Reporting requirements.* A grant recipient who received qualifying COVID-19 grant funds and who excludes those funds when calculating Iowa net income should retain documentation to support the claimed exclusion. A grant recipient must provide such documentation to the department if requested. The required documentation may include, but is not limited to, documentation to support that the grant recipient was issued and received the grant within the qualifying periods.

This rule is intended to implement Iowa Code section 422.7(62).

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◊ Two or more ARCs

CHAPTER 601  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST,  
AND TAX CREDITS

[Prior to 12/17/86, Revenue Department[730]]  
[Prior to 11/2/22, see Revenue Department[701] Ch 58]

**701—601.1(422) Who must file.** Every financial institution as defined in 701—subrule 57.1(2), regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the financial institution was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

**601.1(1) *Income tax of financial institutions in liquidation.*** When a financial institution is in the process of liquidation, or in the hands of a receiver, the franchise tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such financial institutions, and must be filed at the same time and in the same manner as required of other financial institutions.

**601.1(2) *Franchise tax returns for financial institutions dissolved.*** Financial institutions which have been dissolved during the income year must file franchise tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a financial institution dissolves and disposes of its assets without making provision for the payment of its accrued Iowa franchise tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

This rule is intended to implement Iowa Code sections 422.60 and 422.61.  
[Editorial change: IAC Supplement 11/2/22]

**701—601.2(422) Time and place for filing return.**

**601.2(1) *Returns of financial institutions.*** A return of income for all financial institutions must be filed on or before the delinquency date. The delinquency date for all financial institutions is the day following the last day of the fourth month following the close of the taxpayer's taxable year, whether the return is made on the basis of the calendar year or the fiscal year; or the day following the last day of the period covered by an extension of time granted by the director. When the last day prior to the delinquency date falls on a Saturday, Sunday, or holiday, the return will be timely if it is filed on the following day that is not a Saturday, Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed and postage paid in ample time to reach the department on or before the delinquency date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Franchise Tax Processing, P.O. Box 10413, Des Moines, Iowa 50306.

**601.2(2) *Short period returns.*** Where under a provision of the Internal Revenue Code, a financial institution is required to file a tax return for a period of less than 12 months, a short period Iowa franchise tax return must be filed for the same period. The delinquency date for the short period return is 45 days after the federal due date not considering any federal extension of time to file.

**601.2(3) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.*** See 701—subrule 39.2(4).

This rule is intended to implement Iowa Code sections 422.24, 422.62, and 422.66.  
[ARC 6551C, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22]

**701—601.3(422) Form for filing.**

**601.3(1) *Use and completeness of prescribed forms.*** Returns shall be made by financial institutions on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the delinquency date. Taxpayers shall carefully prepare their returns so as to fully and clearly

set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

**601.3(2) Form for filing—financial institutions.** Financial institutions as defined by Iowa Code section 422.61(1) shall include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, capital gains, tax computation and tax deposits, work opportunity credit computation, foreign tax credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a financial institution whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

- a. Capital gains.
- b. Dividend income and special deductions.
- c. Work opportunity credit computation.
- d. Foreign tax credit computation.
- e. Holding company tax computation.
- f. Alternative minimum tax computation.
- g. Schedules detailing other income and other deductions.

**601.3(3) Amended returns.** If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income subject to franchise tax was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 57.2(1) and rule 701—60.3(422).

This rule is intended to implement Iowa Code sections 422.62, 422.66 and 422.73.  
[Editorial change: IAC Supplement 11/2/22]

#### **701—601.4(422) Payment of tax.**

**601.4(1) Quarterly estimated payments.** Effective for taxable years beginning on or after July 1, 1977, financial institutions are required to make quarterly payments of estimated franchise tax. Rules pertaining to the estimated tax are contained in 701—Chapter 61.

**601.4(2) Reserved.**

**601.4(3) Penalty and interest on unpaid tax.** See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each

fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

**601.4(4) *Payment of tax by uncertified checks.*** The department will accept uncertified checks in payment of franchise taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more financial institutions' taxes, the remittance must be accompanied by a letter of transmittal stating:

- a. The name of the drawer of the check;
- b. The amount of the check;
- c. The amount of any cash, money order or other instrument included in the same remittance;
- d. The name of each financial institution whose tax is to be paid by the remittance; and
- e. The amount of payment on account of each financial institution.

**601.4(5) *Procedure with respect to dishonored checks.*** If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from the taxpayer's obligation until the check has been paid.

This rule is intended to implement Iowa Code chapter 422.

[Editorial change: IAC Supplement 11/2/22]

#### **701—601.5(422) Minimum tax.**

**601.5(1)** Reserved.

**601.5(2)** For tax years beginning after 1997, a small business corporation or a new corporation, that is a financial institution, for its first year of existence, that through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small business corporation that is a financial institution may apply any alternative minimum tax credit carryforward to the extent of its regular Iowa franchise tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.63. The minimum tax rate is 60 percent of the maximum franchise tax rate rounded to the nearest one-tenth of 1 percent or 3 percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code sections 422.35 and 422.61(4)
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items
Less:	Iowa alternative tax net operating loss deduction \$40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For taxable years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for Subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for Subsections (a)(4), (c)(1), (d), and (g) of the Internal Revenue Code used to compute federal alternative minimum taxable income computed without adjustments and the \$40,000 exemption. The state alternative tax net operating loss deduction shall be

substituted for the amounts in Section 56(g)(1)(B) of the Internal Revenue Code. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

- a. Tax preference items are:
  1. Intangible drilling costs;
  2. Incentive stock options;
  3. Reserves for losses on bad debts of financial institutions;
  4. Appreciated property charitable deductions;
  5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.
- b. Adjustments are:
  1. Depreciation;
  2. Mining exploration and development;
  3. Long-term contracts;
  4. Iowa alternative minimum net operating loss deduction;
  5. Book income or adjusted earnings and profits.
- c. Losses added back are:
  1. Farm losses;
  2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—59.2(422) carried forward from tax years beginning before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years beginning after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying allocation and apportionment. The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the \$40,000 exemption exceeds \$150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

Federal taxable income before NOL	\$ 35,000
Interest exempt from federal tax	5,000
Tax preferences and adjustments	53,400
Iowa income tax expensed on federal	878
Iowa NOL carryforward	<25,000>

For tax year 1988, the following information is available:

Federal taxable income before NOL	\$ <90,000>
Interest exempt from federal tax	4,000
Tax preferences and adjustments	20,000
Iowa franchise tax refund reported on federal	878

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	\$ 35,000
Add interest exempt from federal tax	5,000
Add Iowa franchise tax expensed	878
Iowa taxable income before NOL carryforward	<u>\$ 40,878</u>
Less NOL carryforward	<u>&lt;25,000&gt;</u>
Iowa taxable income	\$ 15,878
Iowa income tax	\$ 794
Alternative Minimum Tax	
Iowa taxable income before NOL	\$ 40,878
Add preferences and adjustments	53,400
Total	<u>\$ 94,278</u>
Less NOL carryforward*	<u>&lt;25,000&gt;</u>
Iowa alternative taxable income	\$ 69,278
Less exemption amount	<u>&lt;40,000&gt;</u>
Total	\$ 29,278
Times 3%	878
Less regular tax	<u>794</u>
Alternative minimum tax	\$ 84

\*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	\$ 35,000
Add interest exempt from federal tax	5,000
Add Iowa franchise tax expensed	878
Iowa taxable income before NOL carryforward	<u>\$ 40,878</u>
Less NOL carryforward	<u>&lt;25,000&gt;</u>
	\$ 15,878
Less NOL carryback from 1988 <sup>1</sup>	<u>&lt;86,878&gt;</u>
NOL carryforward	\$ <71,000>
Alternative Minimum Tax	
Iowa taxable income before NOL	\$ 40,878
Add preferences and adjustments	53,400
Total	<u>\$ 94,278</u>
Less NOL carryforward from pre-1987 tax year	<u>&lt;25,000&gt;</u>
Total	\$ 69,278
Less alternative minimum tax NOL <sup>2</sup>	<u>&lt;62,350&gt;</u>
Total	\$ 6,928
Less exemption	<u>&lt;40,000&gt;</u>
Alternative minimum taxable income after NOL	\$ -0-

<sup>1</sup>Computation of 1988 Iowa NOL

Federal NOL	\$ <90,000>
Add interest exempt from federal tax	4,000
Less Iowa refund in federal income	<u>&lt;878&gt;</u>
Iowa NOL	\$ <86,878>

<sup>2</sup>Computation of 1988 Alternative Minimum Tax NOL

Iowa NOL	\$ <86,878>
Add preferences and adjustments	<u>20,000</u>
Total	\$ <66,878>
NOL carryback limited to 90% of alternative minimum income before NOL and exemption*	<u>\$ &lt;62,350&gt;</u>
Alternative minimum tax NOL carryforward	\$ 4,528

\*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the \$40,000 exemption amount ( $\$69,278 \times 90\% = \$62,350$ ).

**601.5(3)** Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

**601.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

*a. Computation of minimum tax credit on Schedule IA 8827F.* The minimum tax credit is computed on Schedule IA 8827F from information on Schedule IA 4626F for prior tax years, Form IA 1120F and Schedule IA 4626F for the current year and from Schedule IA 8827F for prior tax years.

*b. Examples of computation of the minimum tax credit and carryover of the credit.*

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2011. For 2012, taxpayer reported regular tax of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2012 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2011 was used, there is a \$3,000 minimum tax carryover credit to 2013.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2011. For 2012, taxpayer reported regular tax of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2012 because, although the regular tax exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2013.

*c. Minimum tax credit after merger.* When two or more financial institutions merge or consolidate into one financial organization, the minimum tax credit of the merged or consolidated operation is available for use by the survivor of the merger or consolidation.

This rule is intended to implement Iowa Code section 422.60.

[ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 2829C, IAB 11/23/16, effective 1/1/17; Editorial change: IAC Supplement 11/2/22]

**701—601.6(422) Refunds and overpayments.**

**601.6(1) to 601.6(8)** Reserved.

**601.6(9)** For refund claims received by the department after June 11, 1984. If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting

from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

**601.6(10)** Reserved.

**601.6(11)** *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

**601.6(12)** Reserved.

**601.6(13)** *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

[Editorial change: IAC Supplement 11/2/22]

**701—601.7(422) Allocation of franchise tax revenues.** For fiscal years prior to July 1, 2004, each quarterly distribution shall be made up of the tax shown due on the franchise tax returns received during that quarter, net of all refunds of franchise tax established during that quarter. In determining the portion of franchise tax revenues to be distributed to cities and counties for fiscal years prior to July 1, 2004, each financial institution, as defined by Iowa Code section 422.61, is required to submit the appropriate allocation data with the filing of its Iowa franchise tax return. Each financial institution shall accumulate or maintain data to properly determine the business activity ratios as prescribed in subrules 58.7(1) and 58.7(2). The allocation shall be made on the basis of business activity for each office location. The word “office” shall mean a branch office, a drive-in bank depository or any other establishment whereby the business pertaining to the financial institution is carried on.

**601.7(1)** *Business activity determination for a production credit association.* A production credit association shall measure its business activity on the basis of loan volume. “Loan volume” shall mean total loans originated during the taxable period. The business activity for each office location shall be that percentage of loans originated by each office to total loans originated for all office locations during the taxable period.

**601.7(2)** *Business activity determination for a financial institution other than a production credit association.* A financial institution, other than a production credit association, shall measure its business activity on a basis of net deposits. The business activity of each office shall be that percentage of average “savings and demand deposits net of withdrawals” for each office location to the total average “savings and demand deposits net of withdrawals” for all office locations.

This rule is intended to implement Iowa Code section 422.61.

[Editorial change: IAC Supplement 11/2/22]

**701—601.8(15E) Eligible housing business tax credit.** For tax years beginning on or after January 1, 2000, a financial institution may claim on the franchise tax return the pro rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate or trust which has been approved as an eligible housing business by the economic development authority. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—58.22(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

An eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer’s pro-rata share of the earnings of the partnership, limited liability company, estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership,

limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. Any eligible housing business tax credit in excess of the franchise tax liability must be carried forward for seven years or until it is used, whichever is the earlier.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

**601.8(1) *Computation of credit.*** New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

If the eligible housing business fails to maintain the requirements of 2014 Iowa Code section 15E.193B to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 2014 Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit, and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 58.8(2). The tax credit certificate must be included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the economic development authority may be found under 261—Chapter 59.

**601.8(2) *Transfer of the eligible housing business tax credit.*** For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the \$3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued

by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling \$250,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The \$250,000 tax credit is going to be transferred to ABC Bank, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, ABC Bank cannot file an amended Iowa franchise tax return for the 2013 tax year until January 1, 2016, to claim the \$250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling \$150,000. The \$3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The \$150,000 tax credit is going to be transferred to XYZ Bank and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, XYZ Bank cannot file an amended Iowa franchise tax return for the 2014 tax year until January 1, 2016, to claim the \$150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the economic development authority, along with a statement which contains the transferee's name, address and tax identification number, and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the economic development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2014 Iowa Code section 15E.193B.

[ARC 1744C, IAB 11/26/14, effective 12/31/14; Editorial change: IAC Supplement 11/2/22]

**701—601.9(15E) Eligible development business investment tax credit.** Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.  
[Editorial change: IAC Supplement 11/2/22]

**701—601.10(404A,422) Historic preservation and cultural and entertainment district tax credit.** For tax years beginning on or after January 1, 2001, a historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information related to projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, see rule 701—52.18(404A,422). For information related to projects registered on or after July 1, 2014, and before August 15, 2016, see rule 701—52.47(404A,422). For information related to projects registered on or after August 15, 2016, see rule 701—52.48(404A,422). For projects registered before August 15, 2016, see also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs under 223—Chapter 48. For projects registered on or after August 15, 2016, see also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the economic development authority under 261—Chapter 49.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.60.

[ARC 1968C, IAB 4/15/15, effective 5/20/15; ARC 2928C, IAB 2/1/17, effective 3/8/17; Editorial change: IAC Supplement 11/2/22]

**701—601.11(15E,422) Venture capital credits.**

**601.11(1) Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.**

*a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011.

*b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015.* For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying

business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment, but these investments cannot be redeemed prior to January 1, 2016. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

*c. Equity investments in a qualifying business on or after July 2, 2015.* For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed \$2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000.

(3) Year in which the credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For the purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must

be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 701—paragraph 42.22(1)“c.”

(5) Carryforward period. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division V, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

(6) Refunds, transfers, and carryback prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not refundable and is not transferable to any other taxpayer.

**601.11(2)** *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**601.11(3)** *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

**601.11(4)** *Innovation fund investment tax credit.* See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$8 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.42, 15E.66 and 422.60 and section 15E.43 as amended by 2015 Iowa Acts, chapter 138.

[ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9966B, IAB 1/11/12, effective 2/15/12; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 2632C, IAB 7/20/16, effective 8/24/16; Editorial change: IAC Supplement 11/2/22]

**701—601.12(15) New capital investment program tax credits.** Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rules 701—52.28(15) and 701—58.17(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

This rule is intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

[Editorial change: IAC Supplement 11/2/22]

**701—601.13(15E,422) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of

endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 and subsequent calendar years, the total amount of endow Iowa tax credits is \$6 million; the maximum amount of tax credit authorized to a single taxpayer is \$300,000 (\$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620, and section 422.60.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9876B, IAB 11/30/11, effective 1/4/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1138C, IAB 10/30/13, effective 12/4/13; Editorial change: IAC Supplement 11/2/22]

**701—601.14(15I,422) Wage-benefits tax credit.** Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit, subject to the availability of the credit, equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for eligible financial institutions. For information on the eligibility for the wage-benefits tax credit, how to file applications for the wage-benefits tax credit, how the wage-benefits tax credit is computed, the repeal of the wage-benefits credit effective July 1, 2008, and other details about the credit, see rule 701—52.25(15I,422).

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code Supplement section 422.60(10) as amended by 2008 Iowa Acts, House File 2700, section 164.

[Editorial change: IAC Supplement 11/2/22]

**701—601.15(422,476B) Wind energy production tax credit.** Effective for tax years beginning on or after July 1, 2006, owners of qualified wind energy production facilities approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the wind energy production tax credit, how the wind energy production tax credit is computed, how the wind energy production tax credit can be transferred and other details about the credit, see rule 701—52.26(422,476B). See also the administrative rules for the wind energy production tax credit for the Iowa utilities board in rules 199—15.18(476B) and 199—15.20(476B).

This rule is intended to implement Iowa Code section 422.60 and chapter 476B.

[Editorial change: IAC Supplement 11/2/22]

**701—601.16(422,476C) Renewable energy tax credit.** Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the renewable energy tax credit, how the renewable energy tax credit is computed, how the renewable energy tax credit can be transferred and other details about the credit, see rule 701—52.27(422,476C). See also the administrative rules for the renewable energy tax credit for the Iowa utilities board in rules 199—15.19(476C) and 199—15.21(476C).

This rule is intended to implement Iowa Code section 422.60 and chapter 476C.

[Editorial change: IAC Supplement 11/2/22]

**701—601.17(15) High quality job creation program.** Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—52.40(15) for information on the investment tax credit under the high quality jobs program. Any investment tax credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid, and can be claimed on tax returns filed after July 1, 2009. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

For information on what credits can be taken under this program, how the investment tax credit is computed and other details about this program, see rule 701—52.28(15). However, the research credit described in subrule 52.28(1) is not available for franchise tax filers.

This rule is intended to implement Iowa Code Supplement chapter 15.  
[ARC 8589B, IAB 3/10/10, effective 4/14/10; Editorial change: IAC Supplement 11/2/22]

**701—601.18(15E,422) Economic development region revolving fund tax credit.** Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

This rule is intended to implement Iowa Code sections 15E.232 and 422.60 as amended by 2010 Iowa Acts, Senate File 2380.  
[ARC 9104B, IAB 9/22/10, effective 10/27/10; Editorial change: IAC Supplement 11/2/22]

**701—601.19(15,422) Film qualified expenditure tax credit.** Effective for tax years beginning on or after January 1, 2007, but beginning before January 1, 2012, a film qualified expenditure tax credit is available for franchise tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa economic development authority (the authority). For information on the qualified expenditures eligible for the credit, how the film qualified expenditure tax credit is claimed, how the film qualified expenditure tax credit can be transferred and other details about the credit, see rule 701—52.34(15,422). See also the authority's administrative rules for the film qualified expenditure tax credit at 261—Chapter 36.

This rule is intended to implement Iowa Code section 422.60 as amended by 2012 Iowa Acts, House File 2337, section 36.  
[ARC 0398C, IAB 10/17/12, effective 11/21/12; Editorial change: IAC Supplement 11/2/22]

**701—601.20(15,422) Film investment tax credit.** Effective for tax years beginning on or after January 1, 2007, but beginning before January 1, 2012, a film investment tax credit is available for franchise tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa economic development authority (the authority). For information on how the film investment tax credit is claimed, how the film investment tax credit can

be transferred and other details about the credit, see rule 701—52.35(15,422). See also the authority's administrative rules for the film investment tax credit at 261—Chapter 36.

This rule is intended to implement Iowa Code section 422.60 as amended by 2012 Iowa Acts, House File 2337, section 36.

[ARC 0398C, IAB 10/17/12, effective 11/21/12; Editorial change: IAC Supplement 11/2/22]

**701—601.21(15) High quality jobs program.** Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

For information on the credits that may be taken under this program, how the investment tax credit is computed and other details about the program, see rule 701—52.40(15). NOTE: The research credit described in 701—subrule 52.40(1) is not available for franchise tax filers.

This rule is intended to implement Iowa Code chapter 15.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; Editorial change: IAC Supplement 11/2/22]

**701—601.22(422) Solar energy system tax credit.** Effective for installations placed in service during tax years beginning on or after January 1, 2014, a solar energy system tax credit is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. The credit is available to financial institutions according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.60(12) "a."

[ARC 1666C, IAB 10/15/14, effective 11/19/14; ARC 5590C, IAB 4/21/21, effective 5/26/21; Editorial change: IAC Supplement 11/2/22]

**701—601.23(15) Workforce housing tax incentives program.** A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for franchise tax. For information on how the workforce housing tax incentives can be claimed, how the investment tax credit can be transferred and other details about the workforce housing tax incentives, see rule 701—52.46(15). The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.

[ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 3837C, IAB 6/6/18, effective 7/11/18; Editorial change: IAC Supplement 11/2/22]

**701—601.24(422) Deduction of credits.**

**601.24(1) Sequencing of credit deductions.** The credits against computed tax set forth in Iowa Code section 422.60 shall be claimed in the following sequence.

- a. Alternative minimum tax credit (for tax years beginning during 2021 only).
- b. Qualifying business investment tax credit (also known as angel investor tax credit).
- c. Historic preservation tax credit (when the taxpayer has elected that the credit be nonrefundable under Iowa Code section 404A.2(4)).
- d. Innovation fund investment tax credit.
- e. Endow Iowa tax credit.
- f. Redevelopment tax credit.
- g. Workforce housing tax credit.
- h. Hoover presidential library tax credit.
- i. Enterprise zone tax credit.
- j. High quality jobs investment tax credit.
- k. Wind energy production tax credit.

- l.* Renewable energy tax credit.
- m.* Solar energy system tax credit.
- n.* Alternative minimum tax credit (for tax years beginning before January 1, 2021, only).
- o.* Historic preservation tax credit (when the taxpayer has elected that the credit be refundable under Iowa Code section 404A.2(4)).
- p.* High quality jobs third-party developer tax credit.
- q.* Estimated payments, payments with vouchers, and composite tax credits.

**601.24(2)** *Order of credits carried forward from a previous tax year.* A credit carried forward from a previous tax year shall be applied against computed tax before a credit earned under the same credit program in the current tax year. However, a credit carried forward from a previous tax year cannot be applied against computed tax before a credit awarded under a different credit program in a later year that appears before it in the sequence in subrule 58.24(1). For example, an innovation fund investment tax credit awarded in the current tax year must be applied against computed tax before a renewable energy tax credit carried forward from a previous tax year.

This rule is intended to implement Iowa Code sections 422.60 and 422.91.  
 [ARC 6030C, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22; ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—601.25(15E,422) Hoover presidential library tax credit.** A Hoover presidential library tax credit is available according to the same requirements, conditions, and limitations as described in rule 701—42.57(15E,422) and 261—Chapter 43.

This rule is intended to implement Iowa Code sections 15E.364 and 422.60(14) as enacted by 2021 Iowa Acts, House File 588, sections 1 and 4.

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<sup>◊</sup> Two or more ARCs

TITLE VIII  
FIDUCIARY INCOME TAXCHAPTER 700  
FIDUCIARY INCOME TAX

[Formerly fiduciary rules ch 48, See IAB 9/30/81]  
[Prior to 12/17/86, Revenue Department[730]]  
[Prior to 11/2/22, see Revenue Department[701] Ch 89]

**701—700.1(422) Administration.**

**700.1(1) Definitions.** The following definitions cover 701—Chapter 89 and are in addition to the definitions contained in Iowa Code section 422.4.

“*Administrator*” means the administrator of the compliance division of the department of revenue or the personal representative of an intestate estate.

“*Compliance division*” is the organizational unit of the department created by the director to administer the inheritance and fiduciary income tax laws.

“*Department*” means the department of revenue.

“*Director*” means the director of revenue.

“*Gross income*” includes any and all income prior to any deductions as set forth on the Iowa fiduciary return of income.

“*Personal representative*” means the executor, administrator or trustee of a decedent’s estate.

“*Tax*” means the income tax imposed on estates and trusts under Iowa Code section 422.6.

“*Taxable income*” is the income of the fiduciary and also includes distributions to beneficiaries as set forth on the Iowa fiduciary return of income.

“*Taxpayer*” means the executor, administrator or other personal representative of a decedent’s estate required to file a return for the estate and the decedent under Iowa Code sections 422.14 and 422.23. “Taxpayer” also means the trustee of a trust subject to tax under 26 U.S.C. Section 641 and required to file a return under 26 U.S.C. Section 6012(b), as well as the trustee of the bankruptcy estate of an individual under Chapter 7 or 11 of Title 11 of the United States Code.

**700.1(2) Delegation of authority.** The director delegates to the administrator of the compliance division, subject always to the supervision and review of the director, the authority to administer the fiduciary income tax. This authority specifically includes, but is not limited to: determining the correct fiduciary income tax liability; making tax liability assessments; issuing refunds; releasing tax liens; filing tax liability claims in probated estates and releasing the claims upon payment of the tax; and issuing the certificate of acquittance authorized by Iowa Code section 422.27. The administrator of the compliance division may delegate the examination and audit of tax returns to the supervisors, agents and employees and representatives of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.4, 422.6, 422.23, 422.25, 422.26, 422.27 and 422.73.

[ARC 1545C, IAB 7/23/14, effective 8/27/14; Editorial change: IAC Supplement 11/2/22]

**701—700.2(422) Confidentiality.**

**700.2(1) Confidential information.** The state and federal returns and accompanying schedules, and the taxpayer’s books, records, documents and accounts of any person, firm or corporation are held confidential, except the information which is deemed a public record by state and federal law. See 26 U.S.C. Section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal tax return information. See rules 701—6.3(17A) and 701—38.6(422) regarding the confidentiality of a decedent’s individual income tax returns.

**700.2(2) Information not confidential.** Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not confidential. The fact alone that a return has or has not been filed with the department is not confidential information. 1976 Op. Att’y. Gen. 679.

**700.2(3) Documents to be filed.**

a. *Estates of Iowa decedents.* A copy of the inheritance tax return and probate inventory required by Iowa Code section 633.361 and 701—subrule 86.2(2) (relating to inheritance tax) and a copy of the

decedent's will in testate estates shall be filed with the first fiduciary return of income, unless previously filed with the department for inheritance tax purposes.

*b. Nonresident decedents—ancillary administration.* If ancillary administration has been opened for the estate of a nonresident decedent, a copy of the inheritance tax return and probate inventory and a copy of the decedent's will in testate estates shall be filed with the department, subject to the same conditions and requirements in estates of resident decedents. If ancillary administration has not been opened for a nonresident decedent with Iowa taxable income, a copy of the inventory filed in the primary estate, or the portion of the inventory listing the property generating the Iowa income and the decedent's will in testate estates, must be filed with the department with the first fiduciary return of income.

*c. Inter vivos trusts.* Inter vivos trusts with a situs in Iowa and inter vivos trusts with a situs outside Iowa with Iowa taxable income shall submit to the department with the first fiduciary return the following: (1) a copy of the trust instrument; (2) a list of the trust assets (those generating Iowa taxable income in case of trusts with a situs outside Iowa); and (3) an estimate of the fair market value of each asset. If the trust instrument is amended or additional assets are added to the trust corpus (additional assets which generate Iowa taxable income in case of trusts with a situs outside Iowa), a copy of the amended items must be submitted to the department with the first fiduciary return of income following the change.

*d. Testamentary trusts.* If the estate was not reported for inheritance tax purposes, a copy of the decedent's will and a list of assets in the trust corpus in testamentary trusts with a situs both within and without Iowa must be submitted to the department with the first fiduciary return of income.

*e. Safe deposit box.* 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.

**700.2(4) Required records.** The taxpayer shall keep records and accounts necessary to substantiate reportable income and deductions. Upon request, the taxpayer shall furnish the department documents, such as copies of tax returns, court orders, trust instruments, annual reports, canceled checks and like information, as may be reasonably necessary to enable the department to determine the correct tax liability. *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).

This rule is intended to implement Iowa Code sections 422.25, 422.27, 422.28, 422.73 and 1997 Iowa Acts, chapter 60, sections 1 and 2.

[Editorial change: IAC Supplement 11/2/22]

### **701—700.3(422) Situs of trusts.**

**700.3(1) Testamentary trusts.** The situs of a testamentary trust for tax purposes is the state of the decedent's residence at the time of death until the jurisdiction of the court in which the trust proceedings are pending is terminated. In the event of termination and the trust remains open, the situs of the trust is governed by the same rules as pertain to the situs of inter vivos trusts.

**700.3(2) Inter vivos trusts.** If an inter vivos trust is created by order of court or makes an accounting to the court, its situs is the state where the court having jurisdiction is located until the jurisdiction is terminated. The situs of an inter vivos trust which is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679 is the state of the grantor's residence, or the state of residence of the person other than the grantor deemed the owner, to the extent the income of the trust is governed by the grantor trust rules.

If an inter vivos trust (other than a trust subject to the grantor trust rules in 26 U.S.C. Sections 671 to 679) is not required to make an accounting to and is not subject to the control of a court, its situs depends on the relevant facts of each case. The relevant facts include, but are not limited to: the residence of the trustees or a majority of them; the location of the principal office where the trust is administered; and the location of the evidence of the intangible assets of the trust (such as stocks, bonds, bank accounts, etc.). The residence of the grantor of a trust, not subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, is not a controlling factor as to the situs of the trust, unless the person is also a trustee. A statement in the trust instrument that the law of a certain jurisdiction shall govern the administration of

the trust is not a controlling factor in determining situs. The residence of the beneficiaries of a trust is also not relevant in determining situs.

**700.3(3) Part-year trust.** A trust that has its situs part of the year within Iowa and part of the same year outside of Iowa is to report its income on Iowa Form IA-1041. Essentially, to report the income, the trust will be treated similarly to a nonresident or part-year resident for Iowa income tax purposes. To complete the return, the trust should complete page one of Form IA-1041, the income and deductions portions of the form. The income and deductions reported in these two portions of the form should include all the trust's income reported during the tax year. After the previous computation has been completed, then Schedule C of Form IA-1041 is completed to determine a nonresident/part-year resident credit similar to the calculation set forth in rule 701—42.5(422) for individual income tax.

This rule is intended to implement Iowa Code sections 422.6, 422.8, and 422.14.  
[ARC 0398C, IAB 10/17/12, effective 11/21/12; Editorial change: IAC Supplement 11/2/22]

#### **701—700.4(422) Fiduciary returns and payment of the tax.**

**700.4(1) Form of return.** The form of the fiduciary return shall be prescribed by the director. It shall conform as nearly as possible to the federal fiduciary return.

**700.4(2) Required federal returns and schedules.** Nonresident estates with Iowa taxable income and trusts with situs outside Iowa with Iowa taxable income must submit a copy of the federal fiduciary return with the Iowa return. Estates of Iowa decedents and trusts with a situs in Iowa must submit copies of the federal schedules that substantiate gross income, deductions and ordinary and throwback distributions to beneficiaries with the Iowa return.

**700.4(3) Same form for nonresident estates and foreign situs trusts.** Nonresident estates and foreign situs trusts shall use the same form for reporting Iowa taxable income as prescribed for resident estates and trusts with a situs in Iowa.

**700.4(4) Accounting period—tax year.** The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by Iowa Code section 422.6 must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid, the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. Sections 441 to 443, federal regulations Sections 1.441 - 1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

EXAMPLE 1. Decedent died July 4, 1990. The taxable year for the estate commences the day after the decedent's death (July 5, 1990) and will end December 31, 1990, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, 1990, or the last day of any future month (except December 31, 1990), but no later than June 30, 1991, subject to the condition that it is selected prior to the time the return and payment are originally due.

EXAMPLE 2. Grantor creates an irrevocable trust on July 27, 1989. On July 1, 1990, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, 1989. Since the return was due March 17, 1990 (March 15 was a Saturday) for federal income tax purposes and March 31, 1990, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

**700.4(5) Short year returns.** If an estate or trust is in existence only a portion of the taxable year, a return must be filed for the partial year in accordance with subrule 89.4(6).

**700.4(6) Minimum filing requirements.**

a. *General rule.* A fiduciary return of income must be filed if the gross income of the estate or trust for the taxable year is \$600 or more, regardless of any tax liability.

b. *Exception to the general rule.* A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax

certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to Iowa Code sections 422.27, 633.477 and 633.479. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

**700.4(7) Amended returns.** An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See 701—subrules 43.3(8) and 43.3(15) for the period of time for making a claim for a refund of excess tax paid.

**700.4(8) Return due date.** The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year. Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due. If the due date falls on a Saturday, Sunday, or holiday, the due date is the next day that is not a Saturday, Sunday, or holiday as defined in Iowa Code section 421.9A. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule 701—89.6(422).

**700.4(9) Duties of the taxpayer.**

*a. Income of the estate or trust.* A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 89.4(6) are met and must pay 90 percent of the tax due. Receipt of the return with 90 percent of the tax due paid will result in an automatic six-month extension of time to pay the remaining tax due. The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid. *In re Estate of Oelwein*, 217 Iowa 1137, 1141, 251 N.W. 694 (1933); *Findley v. Taylor*, 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in the personal representative's possession, prior to applying the income to estate obligations. See Iowa Code section 633.352.

*b. Decedent's final individual income tax return.* The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death equals or exceeds the minimum filing requirements. See 701—subrules 39.1(1) to 39.1(3) and 39.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decedent's rights to income received after the day of the decedent's death are income of the decedent's estate or the persons succeeding to the property or rights to income. See Iowa Code sections 633.350 to 633.353 for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the decedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

*c. Decedent's prior year returns.* The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the

jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in Iowa Code section 633.425.

*d. Composite return requirement.* The personal representative of a decedent's estate and the trustee of a trust are subject to the composite return filing and tax payment obligations under Iowa Code section 422.16B and 701—Chapter 405 if the estate or trust has nonresident beneficiaries.

*e. Beneficiary's share of income, deductions and credits.* After the final distribution of income for the taxable year, but prior to the date for filing a beneficiary's individual income tax return, the personal representative of an estate and the trustee of a trust shall furnish each beneficiary receiving a distribution from an estate or trust a written statement specifying the amount and types of income subject to Iowa tax and the kinds and amounts of the deductions and credits against the tax. A copy of the federal schedule K-1, Form 1041, adapted to reflect Iowa taxable income, may be substituted in lieu of the statement.

*f. Liability of a personal representative and trustee.* A personal representative of a decedent's estate and the trustee of a trust shall be personally liable for the amount of Iowa composite tax required to be paid under Iowa Code section 422.16B and 701—Chapter 405 if the composite tax liability attributable to a nonresident beneficiary is not paid and, in addition, is personally liable for any penalty and interest due if the tax is not paid to the department within the time prescribed by law.

This rule is intended to implement Iowa Code sections 422.6, 422.8, 422.16, 422.21, 422.23, 422.25, 422.27, 633.352 and 633.425.

[ARC 6551C, IAB 10/5/22, effective 11/9/22; Editorial change: IAC Supplement 11/2/22; ARC 6900C, IAB 2/22/23, effective 3/29/23]

#### **701—700.5(422) Extension of time to file and pay the tax.**

##### **700.5(1) Automatic extension of time to file.**

*a. For tax years beginning on or after January 1, 1986.* An automatic two-month extension of time to file the fiduciary income tax return will be granted by the department if the requirements set out in subparagraphs (1) and (2) are met.

(1) Filing the extension application on or before the due date of the return. See subrule 89.4(8) for what constitutes timely filing.

(2) Payment of at least 90 percent of the tax by the due date. At least 90 percent of the tax required to be shown due must have been paid on or before the due date of the return. To determine whether or not 90 percent of the tax was "paid" on or before the due date, the aggregate amounts of tax credits applicable to the return plus the tax payments which were made on or before the due date are divided by the tax required to be shown due on the return. If the aggregate of the tax credits and the tax payments is equal to or greater than 90 percent of the tax required to be shown due, the taxpayer will have met the "90 percent" test and no penalty will be assessed.

If the time for filing is extended, interest as provided by law, from the date the return originally was required to be filed to the date of actual payment of the tax, is to be computed on the unpaid tax. See rule 701—10.2(421) for the statutory rate of interest commencing on or after January 1, 1982.

*b. For tax years beginning on or after January 1, 1991.* See 701—subrule 39.2(4).

**700.5(2) Additional extension of time to file beyond the automatic extension.** For tax years beginning on or after January 1, 1986. The department may grant an additional extension of time to file the fiduciary return, not to exceed four months, provided an application for additional time is filed prior to the expiration of the automatic extension of time.

**700.5(3) Extension of time for the decedent's final tax return.** 701—subrule 39.2(4) which provides for extensions of time to file individual income tax returns will apply to the decedent's final tax return.

**700.5(4) Form of application and place of filing.** The application for an extension of time to file the fiduciary income tax return must be made on forms prescribed by the director. The application must be filed with the department prior to the date the return is due, directed to the Compliance Division, Examination Section, P.O. Box 10456, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code section 422.21.

[Editorial change: IAC Supplement 11/2/22]

**701—700.6(422) Penalties.** See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

**701—700.7(422) Interest or refunds on net operating loss carrybacks.**

**700.7(1) Interest on unpaid tax.** Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate described in rule 701—10.2(421). Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

**700.7(2) Interest on refunds and tax paid prior to due date.** For the purpose of determining the time interest begins to accrue, all income tax withheld, estimated tax paid and other tax paid prior to the due date shall be deemed to be paid on the last day the return is required to be filed disregarding any extensions of time to file the return and pay the tax.

**700.7(3) Interest on a net operating loss carryback—the second calendar month period—on or after April 30, 1981.** For net operating losses occurring in any of the taxable years ending on or after April 30, 1981, interest accrues on excess tax paid in a prior year, if the loss is carried back to such year, only after the close of the taxable year in which the loss occurs or on the first day of the second calendar month following the date the tax to be refunded was paid, whichever time is later.

This rule is intended to implement Iowa Code section 422.25.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/2/22]

**701—700.8(422) Reportable income and deductions.**

**700.8(1) Application of the Internal Revenue Code.** Iowa Code section 422.4(16) provides that taxable income of estates and trusts for Iowa income tax purposes is the same as taxable income for federal income tax purposes, subject to certain adjustments specified in Iowa Code sections 422.7 and 422.9. Therefore, the Internal Revenue Code is also Iowa law insofar as it relates to what constitutes gross income, allowable deductions and distributions, subject to the adjustments specified above. See *First National Bank of Ottumwa v. Bair*, 252 N.W.2d 723 (Iowa 1977).

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

For tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in Section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under Section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

**700.8(2) Authority of federal court cases, regulations and rulings.** The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under Iowa Code section 422.4(16). Federal regulations may be interpreted by Iowa courts for state tax purposes. *In re Estate of Loudon*, 249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the jurisdiction where the statute originated properly commands consideration and is highly persuasive. *Eddy v. Short*, 190 Iowa 1376, 1383, 179 N.W. 818 (1920), *In re Estate of Millard*, 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see rule 701—41.2(422).

**700.8(3) Reportable income in general—Iowa estates and trusts.** Estates of Iowa resident decedents and trusts with a situs in Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. See 89.8(11) “b” for the credit allowable against the Iowa tax for income tax paid to another state or country on income reported to Iowa for taxation.

**700.8(4) Reportable income in general—foreign situs estates and trusts.** Estates and trusts with a situs outside Iowa must report all income received from sources within and without Iowa, regardless of whether the income is from real, personal, tangible or intangible property. Foreign situs estates and trusts must also report that portion of the income which is from Iowa sources. Examples of Iowa source income include, but are not limited to: income from real and tangible personal property with a situs in Iowa, such as a farm and from a business located in Iowa; the capital gain portion of an installment sale contract of Iowa situs property; and wages, salaries and other compensation for services performed in Iowa, but received after the death of the decedent. Iowa source income would not include income from intangible personal property, such as annuities, interest on bank deposits, and dividends, unless the income was derived from a business, trade, profession or occupation carried on in Iowa. See paragraph 89.8(11)“d” for the credit allowed a foreign situs estate and trust for income earned outside Iowa.

**700.8(5) Income from property subject to the jurisdiction of the probate court.**

*a. Probate property subject to possession by the personal representative.* Income received on probate property after the decedent’s death is chargeable to the estate or to the person succeeding to the decedent’s property depending on whether the personal representative has the right to, or has taken possession of, the probate property producing the income. (Rev. Ruling 57-133, 1-CB 200 (1957).) If the personal representative has taken possession of or has the right to possession of a specific item of probate property, the income from this property is estate income, even though the personal representative is bound by law to distribute the income during the course of administration to a beneficiary. *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Herring*, 265 N.W.2d 740 (Iowa 1978). The personal representative is charged with the income from this property for each taxable year until the property is distributed or otherwise disposed of. Iowa Code section 633.351 (probate code) specifies the personal representative shall take possession of the decedent’s personal property, except exempt property, and also the decedent’s real estate, except the homestead, if any one of the following conditions are met: if there is no distributee present and competent to take possession; if the real estate is subject to a lease; or if the distributee is present and competent and gives consent to possession. *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Peterson*, 263 N.W.2d 555 (Iowa Ct. of Appeals 1977). In addition, Iowa Code section 633.386 (probate code) gives the personal representative authority to lease real estate (and therefore to take possession) in order to pay the debts and charges of the estate.

*b. Income charged to the heir or beneficiary.* Under Iowa law title to probate property, both real and personal, passes instantaneously on death to the heir or beneficiary. *In re Estate of Bliven*, 236 N.W.2d 366, 370 (Iowa 1975). If property is not subject to the personal representative’s right of possession under Iowa Code section 633.351 (probate code) and the personal representative has not exercised the right to sell, lease, mortgage or pledge real and personal property to pay debts and charges under Iowa Code section 633.386 (probate code), the income from this probate property is not estate income. It is income to the person succeeding to the property.

**700.8(6) Income from nonprobate property.** Income from property not subject to the jurisdiction of the probate court is charged to the beneficiary or other person succeeding to the property. Examples of income from nonprobate property include, but are not limited to: property held in joint tenancy, annuity payments, pension and retirement plans not payable to the estate, and income from certain trusts created by the grantor-decedent. See *Wood, Admr., v. Logue*, 167 Iowa 436, 441, 149 N.W. 613 (1914) for joint tenancy property not being subject to the jurisdiction of the probate court; also *Lang v. Commissioner*, 289 U.S. 109, 77 L.Ed. 1066, 53 S.Ct. 535 (1933).

**700.8(7) Gross income of an estate.**

*a. In general.* 26 U.S.C. Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as the taxable income of an individual, except as modified in Subchapter J of the Internal Revenue Code. The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. Section 641. Subrule 89.8(7), paragraphs “d” to “q,” describe the most common kinds of income of an estate or trust. However, those paragraphs are not intended to identify all types of taxable income.

*b. Definition of the period of administration.* The income charged to the decedent’s estate is reportable by the personal representative for each taxable year during the period of the administration

of the decedent's estate, if the minimum filing requirements are met. The period of administration for Iowa income tax purposes is determined by applying federal tax law to Iowa estates because Iowa taxable income is the same as federal taxable income, subject to the adjustments provided in Iowa Code sections 422.7 and 422.9. *Old Virginia Brick Co., Inc. v. Commissioner*, 367 F.2d 276 (4th CA 1966); *First National Bank of Ottumwa v. Bair*, 252 N.W.2d 723 (Iowa 1977). It is the period actually required by the personal representative to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, legacies and bequests, whether the period required is longer or shorter than the period specified under the probate code. See federal regulations 1.641(b)-3(a). An estate will be considered terminated for income tax purposes when all of the assets have been distributed, except for a reasonable amount set aside in good faith for the payment of unascertained or contingent liabilities and expenses. The delay in closing the estate cannot be capricious. *Frederich v. Commissioner*, 147 F.2d 796 (5th CA 1944). If the period of administration is terminated for income tax purposes, the heir or beneficiary is charged with the income.

*c. The estate's first return—special considerations.* Death terminates the decedent's taxable year. Income received the day of the decedent's death is to be reported on the decedent's final individual return. See 26 U.S.C. 443(a)(2); federal regulation Section 1.443-1(a)(1).

The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income. See 89.8(5) "a" and 89.8(5) "b." Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income. See 26 U.S.C. Section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. Section 2053. See 26 U.S.C. Section 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See 701—paragraphs 86.6(1) "g" and 86.6(3) "b." Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74-175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

*d. Dividends.* All income classified as dividends under 26 U.S.C. Section 61 and federal regulation section 1.61-9, received or constructively received, during the taxable year constitutes gross income to the estate or trust. However, some income labeled as dividends is for tax purposes classified as interest. For example, income from cooperative banks, credit unions, domestic building and loan associations, domestic savings and loan associations, federal savings and loan associations and mutual savings banks are considered interest and not dividends.

*e. Interest.* All interest received or constructively received during the taxable year, with the exception of interest, but not capital gain, from federal securities and from certain bonds issued by the state of Iowa and its political subdivisions listed in rule 701—40.3(422) is income to the estate or trust. Interest from securities issued by a state and its political subdivisions or from foreign securities is included in gross income for Iowa tax purposes, even though the interest may be exempt from federal income tax, except for those bonds listed in rule 701—40.3(422).

*f. Partnerships and other estates and trusts.* If a partnership in which the decedent had an interest is not terminated at death, the deceased partner's share of the partnership income is considered to be all received at the end of the partnership taxable year. As a result, none of the partnership income is

chargeable to the deceased partner, unless the day of the partner's death coincides with the day the partnership year ends. It is chargeable to the deceased partner's estate or the person succeeding to the partner's interest, notwithstanding the fact the deceased partner may have withdrawn most or all of the deceased partner's share of the partnership income prior to death. Federal regulation section 1.706-1(C)(3)(ii); Rev. Ruling 68-215, 18 I.R.B. 14 (1968).

In general, if an estate or trust and its beneficiaries have different taxable years, the beneficiary is required to report the income from the estate or trust as if it were all paid on the last day of the taxable year of the estate or trust. Federal regulation section 1.662(C)-1. *Hay v. U.S.*, 263 F. Supp. 813 (D.C. Tex. 1967). However, if the beneficiary dies during the taxable year of an estate or trust, the taxable income of the beneficiary's estate includes only the portion of the income of the other estate or trust which was required to be distributed to the beneficiary, but was not in fact distributed to the beneficiary before death. The income that was in fact distributed by the other estate or trust prior to the beneficiary's death is properly included in the beneficiary's final income tax return. See federal regulation 1.662(C)-2.

*g. Rents and royalties.* Income received after death for the use or occupancy of the decedent's real and personal property is the income of the decedent's estate or the income of the person succeeding to the property. See 89.8(5) "a" and 89.8(5) "b." If the rental income was accrued, but unpaid at death, the accrued rent is income in respect of a decedent and is to be included as income, either by the estate or the person succeeding to the right to the income, in the taxable year when payment is received. Rent is not limited to payments in cash. It includes, but is not limited to, crop share rental payments when the decedent was a nonparticipating landlord. *Alvin R. Huldeen Estate v. Department of Revenue*, Sac County District Court, Probate No. 14,661 (1975). Income from the sale of grain and livestock in the estate of a participating landlord which was on hand at death is classified as income from a farm or business and not rental income.

Income from royalties would include, but is not limited to, payment for rights in books, plays, copyrights, trademarks, formulas, patents and from the exploitation of natural resources.

*h. Farm and business income—in general.* The death of the decedent does not alter the rules under which business and farm income is computed for income tax purposes. However, the decedent's estate as a new taxpayer may adopt a taxable year which is different from the decedent's taxable year. Also, the decedent's estate may adopt a different accounting method. The rules for determining a gain or loss from the sale or exchange of assets in the decedent's estate are the same as those for an individual. However, see 89.8(7) "i" and 89.8(7) "j" for the basis for gain or loss from the sale or exchange of property acquired from a decedent and 89.8(7) "l" for depreciation rules for property acquired from a decedent.

*i. Basis for gain or loss—the stepped-up basis.* Property acquired from a decedent receives a new basis for determining gain or loss when the property is sold or exchanged. This rule does not apply to property which is classified as income in respect of a decedent and certain other property designated in 26 U.S.C. Section 1014(b) and (c) and the federal regulations thereunder. The basis of property acquired from a decedent is either: (1) its fair market value at the time of death or the alternative value when it has been elected for federal estate tax purposes under 26 U.S.C. Section 2032, or (2) its special use value when the property has been valued for federal estate tax purposes under 26 U.S.C. Section 2032A. The decedent's basis in the property is not relevant.

If an estate files a federal estate tax return, then the basis is governed by the federal estate tax value determination. However, if an estate does not file a federal estate tax return, then Iowa inheritance tax valuation governs the basis for the property that is acquired.

**EXAMPLE 1.** Decedent A died July 1, 1995, owning a 160-acre Iowa farm which the decedent purchased in 1955 for \$200 per acre, or \$32,000. At the time of A's death, the farm had a fair market value of \$2,000 per acre, or \$320,000. In 1965, A and surviving spouse B purchased a residence for \$35,000 in joint tenancy. Surviving spouse B, a school teacher, contributed one half of the purchase price of the residence; therefore, one-half of the residence is excluded from A's gross estate. At the time of A's death, the residence had a fair market value of \$100,000. Surviving spouse B received the entire estate and did not elect the alternative or special use valuation.

B's basis for gain or loss in the farm and residence is computed as follows:

<u>Asset</u>	<u>Fair Market Value at Death</u>	<u>New Basis for Gain or Loss</u>	
160-acre farm	\$320,000		\$320,000
Residence	100,000	½ new basis	50,000
		½ old basis	<u>17,500</u>
			\$ 67,500

Since the entire farm was acquired from A, its basis is 100 percent of the fair market value at death. Only one-half of the residence was acquired from A; therefore, only one half of the residence receives a new basis on A's death.

*j. No new basis—income in respect of a decedent.* Property or rights to income, classified as income in respect of a decedent under 26 U.S.C. Section 691, do not receive a new basis upon the decedent's death. It is a special exception to the stepped-up basis rule. See 26 U.S.C. Section 1014(c) and federal regulation section 1.1014-1(c).

Examples of income in respect of a decedent include, but are not limited to, the following:

1. Wages, salary or other compensation for personal services earned which are unpaid at death.
2. Interest accrued on obligations, such as bank accounts, certificates of deposit, bonds and promissory notes.
3. Accrued interest and unpaid capital gain on real and personal property installment contracts.
4. Federal income tax refunds, if claimed as a deduction on an Iowa income tax return.
5. Accounts receivable, if the decedent was on a cash accounting basis.
6. Crop share rent if the decedent was a nonparticipating landlord on a cash basis. This also includes growing crops, which are to be valued at the time of the decedent's death or alternate valuation date.

The basis for gain or loss for property classified as income in respect of a decedent is the decedent's basis in the property at the time of death.

*k. Gain or loss—holding period.* For the purpose of determining whether the sale or exchange of property is a long- or short-term gain or loss, the holding period of property acquired from a decedent begins the day after the decedent's death, regardless of how long the property was held by the decedent. See 26 U.S.C. Section 1.1223, federal regulation Section 1.1223-1(j). However, if the property acquired from a decedent is sold or otherwise disposed of within one year of the decedent's death, it will be considered to have been held over one year. In general, this is a sufficiently long holding period to qualify the sale or exchange as a long-term gain or loss transaction. However, a one-year holding period does not qualify horses and cattle held for draft, breeding or dairy purposes for long-term gain or loss treatment. A 24-month holding period is required by 26 U.S.C. Section 1231(b)(3) for the transaction to be considered long-term.

Therefore, if this kind of livestock is acquired from a decedent (which is usually the case) and is sold or exchanged within 24 months after the decedent's death, the sale is considered a short-term transaction. See Rev. Ruling 75-361, 2 C.B. 344 (1975). However, even if the sale or exchange results in a short-term gain or loss transaction, the property has a stepped-up basis, because it is acquired from a decedent. See 89.8(7) "i."

*l. Depreciation—property acquired from a decedent.* Property acquired from a decedent which is subject to the allowance for depreciation, receives the same value for depreciation purposes as its basis for gain or loss in a sale or exchange, regardless of its basis or remaining useful life in the hands of the decedent. See 26 U.S.C. Sections 167(g) and 1011; federal regulation Section 1.167(g)-1. For the purpose of determining the life of an asset subject to the allowance for depreciation, the property is treated as if it were acquired the day after the decedent's death. See federal regulation Section 1.167(a)-10. The decedent's estate or other person acquiring depreciable property from the decedent may adopt a depreciation method different from that used by the decedent for the depreciable asset. See federal regulation section 1.167(a)-7.

*m. Section 641(c) gain for sales or exchanges before August 6, 1997.* The gain that is excluded from federal taxable income under 26 U.S.C. Section 641(c) for sales or exchanges before August 6, 1997, constitutes Iowa gross income to the estate or trust. This gain for sales or exchanges before August 6, 1997, is excluded from taxable income for federal purposes because it is subject to a special federal tax under 26 U.S.C. Section 644(a). This special federal tax was repealed for sales or exchanges occurring on or after August 6, 1997. The effect is to tax the gain for sales or exchanges before August 6, 1997, which receives separate treatment for federal income tax purposes, in the same manner as this gain was taxed prior to the enactment of the federal Tax Reform Act of 1976.

*n. Nonrecognition of gain—installment sale contracts before October 20, 1980.* No gain or loss is realized by the estate of a decedent-seller dying before October 20, 1980, when the purchaser in an installment sale contract inherits the seller's rights under the contract of sale. The merger of the asset with the liability is considered to be a nontaxable transfer. Therefore, any unreported gain from the installment sale contract is not subject to income tax when there is a merger of the asset with the liability. See Senate Finance Committee Report to P.L. 96-471.

*o. Recognition of gain—installment sale contracts after October 19, 1980.* Effective for estates of decedents dying after October 19, 1980, Section 3 of Public Law 96-471 (Installment Sales Revision Act of 1980) provides for the recognition of the remaining gain on installment sales contracts when the debtor inherits the obligation and thereby causes a merger of the asset with the liability. The rule after October 19, 1980, is if, as a result of the death of the holder of an installment sale obligation (usually the seller), the installment sale obligation is transferred to the debtor (usually the purchaser); or, if the installment sale obligation is canceled either as a result of the holder's death or by the personal representative of the holder's estate, the remaining gain from the installment sale contract not previously reported is recognized by the holder's estate, as if the remaining balance due had been immediately paid in full. The merger of the asset with the debt is treated as a taxable transfer by the estate of the holder (seller) of the obligation and is income in respect of a decedent realized by the holder's estate.

If the obligation was held by a person other than the seller, such as a trust, the cancellation of the obligation will be treated by that person as a taxable transfer immediately after the seller's death. In the absence of some act of canceling the obligation, such as by distribution or notation which results in cancellation under Iowa Code chapter 554 (Uniform Commercial Code), the disposition is considered to occur no later than the time the period of administration of the estate is ended. See Senate Committee Report to P.L. 96-471.

For gain recognition purposes, if the seller and the debtor were related parties, the value of the installment contract is considered to be not less than full face value, regardless of its value for Iowa inheritance tax or federal estate tax purposes. A related party includes, but is not limited to, the spouse, child (including an adopted child), grandchild, or parent of the seller; an estate in which the seller is a beneficiary; a partnership in which the seller is a partner; a corporation in which the seller owns 50 percent or more of the stock; and a trust where the seller is a beneficiary or is treated as the owner.

If the debtor inherits the obligation to pay or another share of the estate, the personal representative of the holder's estate must set off the contract of sale to the debtor when satisfying the debtor's share of the estate if the debtor's share of estate equals or exceeds the face value of the contract. In this case, the entire contract is canceled and all of the unreported gain is income in respect of a decedent to the estate. If the debtor's share of the estate is less than the face value of the contract of sale, the contract of sale is canceled only to the extent of the debtor's share of the estate and only a like percentage of the unreported gain is considered income in respect of a decedent received immediately by the estate. See Iowa Code section 633.471 for the right of retainer and setoff. *In re Estate of Ferris*, 234 Iowa 960, 14 N.W.2d 889 (1944).

*p. Nonresident aliens—sales of Iowa real estate.* Nonresident aliens and estates and trusts with a situs outside the United States must include the gain from the sale or exchange of Iowa real estate as taxable income, even though the real estate was not effectively connected with a trade or business carried on in the United States. See Public Law 96-499. Any gain paid or distributed to a nonresident alien or an estate or trust with a situs outside the United States is subject to Iowa income composite tax, unless the gain has been previously accumulated and any tax due paid. Paragraph 700.4(9) "d"

and 701—Chapter 405 contain more information on the requirement to pay Iowa composite tax on distributions to nonresident beneficiaries and individuals.

*q. Miscellaneous income.* Miscellaneous income is an inclusive term. It includes those items of income that are subject to Iowa income tax under Iowa Code section 422.6 which are not classified as dividends, interest, rent and royalties, income from partnerships and other fiduciaries, business or farm income and gain or loss from the sale or exchange of assets. Examples of miscellaneous income include, but are not limited to: wages and salaries earned by the decedent which are unpaid at death; federal income tax refunds, if the refund was deducted from an Iowa income tax return; and distributions to the estate from an employee's pension or retirement plan, if subject to Iowa income tax.

*r. Grantor trusts.* If the income of a trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679, the grantor of the trust or other person specified in the trust instrument, and not the trust, is considered the owner of the income. This income is properly reportable on the Iowa individual income tax return of the grantor or other individual treated as the owner. The fiduciary income tax return of a grantor trust is an informational return only. Items of income, deductions and credits of a grantor trust should be reported on a separate statement attached to the fiduciary return of income. See federal regulation Section 1.671-4. The taxable year of a grantor trust must be the same as the taxable year of the grantor, or of the other individual considered the owner of the income for tax purposes. *William Scheft*, 59 T.C. 428. Examples of grantor trusts are, but not limited to: trusts where the grantor or a nonadverse party has the power to revoke the trust or to return the corpus to the grantor; trusts where the grantor or a nonadverse party has the power to distribute income to or for the benefit of the grantor or the grantor's spouse; and trusts where the grantor has retained a reversionary interest in the trust, within specified time limits. See federal regulation Section 1.671-1.

*s. "Equity trusts"—assignment of future wages and salaries.* The assignment of future wages, salaries or other compensation for future services by a grantor to a trust (commonly called "equity" or "family estate" trust) does not shift the tax burden on this income from the grantor to the trust. The trust is subject to the grantor trust rules under 26 U.S.C. Sections 671 to 679. The income of the trust is to be reported by the grantor on an Iowa individual income tax return. *Lucas v. Earl*, 281 U.S. 111, 74 L.Ed. 731, 50 S.Ct. 241 (1930); *Vnuk v. Commissioner*, 621 F.2d 1318 (8th CA 1980); Revenue Ruling 75-257, 2 C.B. 251 (1975); *In re August Erling, Jr., et al.*, Director of Revenue decision, Docket No. 77-237-2C-A (1979).

*t. Adjustments to federal taxable income.* Iowa Code section 422.4(16) provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments set forth in Iowa Code section 422.7 and the modifications relating to federal and state income tax specified in Iowa Code section 422.9. The modifications have these results:

(1) Federal income tax on the income of Iowa situs estates and trusts is deductible for Iowa income tax purposes in the year paid or accrued depending on the method of accounting.

(2) Federal income tax owed by Iowa resident decedents at the time of death is a deduction against estate income in the year paid.

(3) The federal income tax deduction allowable for estates and trusts with a situs outside Iowa is the same as the deduction allowed for an estate or trust with a situs in Iowa.

(4) Federal income tax owed by a nonresident decedent at the time of death may be deducted the same as a deduction allowed for an Iowa resident decedent. See 701—paragraph 41.3(4)“b” for the federal income tax deduction for nonresident individuals.

(5) Iowa income tax paid by the estate is not a deduction in computing Iowa taxable income.

(6) The federal exemption allowed to estates and trusts under 26 U.S.C. Section 642(b), that is, \$600 for an estate, \$300 for simple trust and \$100 for a complex trust, is not deductible for Iowa income tax purposes.

(7) Interest and dividends from federal securities, but not capital gain or loss, is exempt from Iowa income tax and, therefore, is not part of the Iowa taxable income of estates and trusts.

(8) Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether such interest

and dividends are exempt from federal income tax. However, see 701—40.3(422) and 89.8(7)“e” for the exemption for certain bonds issued by the state of Iowa and its political subdivisions which are not included in Iowa taxable income.

(9) See 89.8(7)“m” for the includability of the gain for sales or exchanges before August 6, 1997, excluded by 26 U.S.C. Section 641(c), in the Iowa taxable income of a trust.

(10) See 701—paragraph 86.5(12)“b” for the inheritance tax exemption for the portion of an employee’s pension or retirement plan subject to Iowa income tax.

**700.8(8) Deductions from gross income.**

a. *In general.* The deductions allowable in computing taxable income of estates and trusts are generally those relating to a trade or business and the expenses attributable to investment income. The important distinction between the deductions allowable in computing federal adjusted gross income and itemized deductions for individual income tax has only limited application in determining the taxable income of estates and trusts. Many deductions in computing the taxable income of an individual have no application to the deductions allowable in computing the taxable income of an estate or trust, due to the nature of estates and trusts and the sources of their income. For example, medical expense and moving expense deductions are applicable only to individuals, but taxes and interest expense can be incurred by both individuals and estates and trusts. Also the deduction for distribution to beneficiaries has no application to individual income tax.

b. *Interest expense.* Interest paid on obligations secured by property subject to the personal representative or trustee’s right of possession is a deduction from gross income in the year paid. Interest on debts or charges which the personal representative or trustee is obligated to pay is also a deduction against gross income in the year paid. Interest on obligations secured by property, not subject to the personal representative’s right of possession, is not deductible from the gross income of the estate, but is a deduction for the person succeeding to the encumbered property. No distinction is made between business and nonbusiness interest. See Iowa Code section 633.278 (probate code) for circumstances when the personal representative of the decedent’s estate is required to pay the debt and interest on encumbered property, even though the property is not subject to the personal representative’s right of possession. *J.S. Dean*, 35 T.C. 1083 (1961); Revenue Ruling 57-481, 2 C.B. 48 (1957).

c. *Taxes.* The taxes deductible against the gross income of an estate or trust are limited to the taxes deductible for individual income tax purposes under 26 U.S.C. Section 164, subject to the adjustments specified in Iowa Code section 422.9 relating to federal and state income taxes. Real estate and personal property taxes, including the taxes due, but unpaid at death, are only deductible by the estate on the decedent’s property which is subject to the personal representative’s right of possession. Federal income tax on the income of an estate or trust and federal income tax owing by an Iowa decedent at the time of death, including the federal income tax owing on the decedent’s final return for the year of death, are deductible by the estate or trust in the year paid. For tax years on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers. See 701—subrule 41.3(4) and Iowa Code section 422.5(1)“j.” Examples of taxes not deductible include, but are not limited to: federal estate tax (except federal estate tax paid on income in respect of a decedent); Iowa income and inheritance tax; federal gift taxes; and special assessments increasing the value of property. See 26 U.S.C. Section 275.

d. *Depreciation and depletion—allocation.* If the personal representative of a decedent’s estate has the right to the possession of property eligible for the depreciation allowance, the depreciation is a deduction from the estate’s gross income when the income for the taxable year is accumulated by the estate. If all or part of the income for the year is distributed to the beneficiaries, the deduction for depreciation is apportioned between the estate and the beneficiaries on the basis of the income allocated to each. In the case of an estate, the deduction for depreciation follows the income.

The same depreciation rules apply to simple and complex trusts, with the exception that if the trustee has the right to maintain a reserve for depreciation, and in fact does so, the deduction for depreciation is allocated to the trust to the extent of the reserve maintained, regardless of whether the income is accumulated or distributed. See 26 U.S.C. Section 167, federal regulation 1.167 H-1(b); Revenue Ruling 74-530, 2 C.B. 188 (1974).

The rules governing the allowance for depreciation are also the rules to be applied to the allowance for depletion under 26 U.S.C. Section 611.

*e. The charitable deduction.* The charitable deduction allowed estates and trusts under 26 U.S.C. Section 642(c) is not subject to the percentage of income limitation applicable to individual taxpayers under 26 U.S.C. Section 170(b). The allowable deduction is governed by the terms of the will or trust instrument, which can provide for unlimited payments for charitable purposes. However, an unused charitable contribution carryover of the decedent remaining after the decedent's individual income tax liability for the year of death is determined is not available to the estate. The unused carryover terminates at death, except to the extent it may be used by the surviving spouse. See federal regulation Section 1.170A-10(d)(4)(iii). The deduction is limited to payments of gross income or amounts permanently set aside for charitable uses. A simple pecuniary bequest to charity in the decedent's will does not qualify for the charitable deduction from the estate's income. It is a payment from the corpus of the estate. *Frank Trust of 1931*, 145 F.2d 411 (3rd CA 1949). However, the pecuniary bequest to charity is exempt from the Iowa inheritance tax under Iowa Code section 450.4 if it meets the exemption requirements.

*f. Other deductions.* The category of other deductions includes those deductions allowable in computing taxable income not receiving special itemized treatment on the Iowa fiduciary return of income. The most common kind of other deductions is the expense of administration of an estate or trust paid during the taxable year. Expenses of administration include, but are not limited to: a reasonable fee and the necessary expenses of the attorney employed by the personal representative of an estate or the trustee of a trust; a reasonable fee and the necessary expenses of the personal representative of an estate or the trustee of a trust; accounting fees; court costs; and interest paid on federal estate tax during an extension of time to pay. However, administration expenses are subject to the no double deduction rule. See 26 U.S.C. Section 642(g) and 89.8(8)“g.” Salaries or fees paid during the taxable year for the management of a farm or business are expenses directly attributable to the production of a specific kind of income and are more properly deductible on the farm schedule F or the business schedule C.

*g. The no double deduction rule.* Expenses of administration, certain debts of the decedent like medical expenses incurred prior to death and losses during the period of administration are proper deductions in computing both the taxable income of an estate or trust (or on the decedent's individual return in case of medical expenses) and the taxable estate for federal estate tax purposes under 26 U.S.C. Sections 2053 and 2054. The no double deduction rule only applies to trusts when the trust assets are included for federal estate tax purposes. 26 U.S.C. Section 642(g) prohibits the double deduction of those items which qualify as deductions for both taxes. To prevent the double deduction, it is a prerequisite for the allowance of the deduction for income tax purposes that a statement be filed with the fiduciary return of income waiving the right to claim the item or portion of the item as a deduction on the federal estate tax return. The waiver once filed with the fiduciary return of income is irrevocable. However, unless the waiver has been filed, the decision to claim the deduction or portion of the deduction on the federal estate tax return can be changed anytime prior to the time the item or portion of the item is finally allowed for federal estate tax purposes.

The waiver requirement has no application to estates and trusts not required to file a federal estate tax return.

The no double deduction rule has no application to deductions in respect of a decedent, such as deductions relating to trade or business expenses, interest, taxes, expenses for the production of income and the allowance for depletion, which are deductible both for income tax purposes and federal estate tax purposes. See 26 U.S.C. Section 691(b) and 26 CFR Section 1.691(b)-1 for what constitutes deductions in respect of a decedent.

The no double deduction rule does not apply to the deduction of an item for Iowa inheritance tax purposes. Items are deductible or not in computing the taxable shares for Iowa inheritance tax purposes by reference alone to Iowa Code chapter 450.

Assuming an item is otherwise deductible for income and inheritance tax purposes, the no double deduction rule has the following applications for Iowa income and inheritance tax:

1. Estates and trusts not required to file a federal estate tax return can claim the item as a deduction on both the Iowa inheritance tax return and the Iowa fiduciary income tax return.

2. Estates and trusts required to file a federal estate tax return can claim the item as a deduction on the Iowa inheritance tax return. In addition, the same item or portion of the item is a deduction on the Iowa fiduciary income tax return if the item or portion of the item is not claimed as a deduction on the federal estate tax return. If it is claimed as a deduction on the federal estate tax return, it is not deductible on the Iowa fiduciary income tax return.

3. For tax years ending on or after July 1, 2015, estates or trusts required to file a federal estate tax return can claim administrative expenses as a deduction on the Iowa fiduciary income tax return, regardless of whether the item or a portion of the item was claimed on the federal estate tax return.

This paragraph applies both to estates and trusts with a situs within and without Iowa.

*h. The net operating loss deduction.* Subject to the modifications specified in federal regulation Section 1.642(d)-1, an estate or trust is allowed a deduction for net operating loss which is computed in the same manner as the net operating loss deduction allowable to individual taxpayers. The modification especially applicable to estates and trusts is: The charitable deduction allowable under 26 U.S.C. Section 642(C) is disregarded. See federal regulation Section 1.642(d)-1.

The rule that nonbusiness deductions are only taken into account to the extent of nonbusiness income applies equally to estates and trusts and individual taxpayers. Attorney fees and the fees of the trustee or personal representative, without a showing that these administrative expenses were incurred in carrying on the decedent's or grantor's trade or business, are a nonbusiness deduction. *Refling v. Commissioner*, 47 F.2d 895 (8th CA 1930). Therefore, any excess fees over income are not available for a carryback to a prior taxable year or a carryforward to a future taxable year. *Mary C. Westphal*, 37 T.C. 340 (1961). However, see 89.8(9) "a" for the special rule on excess deductions in the year the estate or trust terminates. Net operating losses are available to the estate or trust and can be carried back for distribution to a beneficiary, with the exception that any unused loss must be distributed to the beneficiaries in the year the estate or trust terminates.

Estates and trusts with a situs outside Iowa are allowed a deduction only for a net operating loss attributable to a trade or business activity carried on in the state of Iowa. In the event the trade or business activity giving rise to the loss is carried on both in Iowa and another state, the net operating loss deduction for Iowa income tax purposes must be prorated on the ratio of the Iowa gross receipts from the trade or business to the total gross receipts from the trade or business. See 701—subrule 40.18(2) for the computation of the net operating loss deduction of a nonresident decedent.

*i. Capital loss deduction.* The capital loss deduction of an estate or trust is computed in the same manner as the capital loss deduction for individual taxpayers. However, it is a deduction only for the estate or trust and is not distributable to a beneficiary, except in the year the estate or trust terminates. *Grey v. Commissioner*, 118 F.2d 153, 141 ALR 1113 (7th CA 1941); *Jones v. Whittington*, 194 F.2d 812 (10th CA 1952). Capital losses do not enter into the computation of the deduction for income required to be distributed currently to beneficiaries. During the period of administration of the estate or trust, capital losses can be used only to offset capital gain for simple trusts required to distribute income currently. However, beneficiaries may derive immediate benefit from capital losses when capital gain is required or permitted to be distributed to beneficiaries prior to closure of the estate or trust, since the losses can be used to offset gain before distribution.

*j. The distribution deduction.* Estates and trusts are allowed to deduct the amounts of income required to be distributed currently and also other amounts properly paid, credited or required to be distributed to the extent of the distributable net income for the year. For income tax purposes, an estate of a decedent is treated as a complex trust, because normally the personal representative of an estate has the discretion whether or not to distribute current income. Therefore, most distributions of income from a decedent's estate fall under the category of "other amounts properly paid, credited or required to be distributed." However, see *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978) for circumstances when the personal representative of an estate is required to distribute current income during the period of administration to a life tenant (the surviving spouse in this case).

The distribution deduction allowed is limited to the distributable net income of the estate or trust for the taxable year. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made

to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668.

Estates and trusts with tax years beginning on or after August 5, 1997, may elect to treat distributions made within 65 days of the end of the tax year as having been made in the tax year of the estate or trust. If amounts in excess of distributable net income are distributed to a beneficiary of a decedent's estate, the excess does not constitute taxable income to the beneficiary. Distributions made to a beneficiary of a complex trust in excess of the distributable net income for the taxable year may or may not be includable in the beneficiary's taxable income depending on whether the excess distribution is governed by the throwback distribution rules under 26 U.S.C. Sections 665 through 668. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

Income distributed to a beneficiary of an estate or trust retains the same character in the hands of the beneficiary as it had in the estate or trust, with the exception of unused capital loss distributed on closure to a corporation, in which case the loss is treated as a short-term loss, regardless of its character in the estate or trust. See federal regulation Section 1.642(h)-1(g). In addition, unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the distributable net income of the estate or trust. See 26 U.S.C. Section 662.2(b) and federal regulation Section 1.662(b)-1. The same character and proportionate distribution rule is illustrated by the following:

EXAMPLE:

Decedent A, a resident of Iowa, died February 15, 1997. Under the terms of the will, all the decedent's property was devised in equal shares to beneficiary B, a resident of Phoenix, Arizona, and beneficiary C, a resident of Cedar Rapids, Iowa. The estate adopted a calendar year as its taxable year. For calendar year 1997, the estate had distributable net income of \$50,000, which is composed of:

Interest income	\$10,000
Dividend income	5,000
Net Iowa farm income	<u>35,000</u>
Total	\$50,000

On December 20, 1997, the estate distributed \$12,500 to beneficiary B, and \$12,500 to beneficiary C. Beneficiaries B and C have received a distribution for 1997 as follows:

<u>Beneficiary B</u>		<u>Beneficiary C</u>	
Interest income	\$2,500	Interest income	\$2,500
Dividends	1,250	Dividends	1,250
Farm income	<u>8,750</u>	Farm income	<u>8,750</u>
Total	\$12,500	Total	\$12,500

The estate is entitled to a deduction of \$25,000 against gross income in 1997 for the distribution to beneficiaries B and C and owes Iowa income tax on the \$25,000 income retained in the estate. Since the interest income of the estate is 20 percent of the distributable net income, 20 percent of the distribution to beneficiaries B and C is considered interest income. Likewise, 10 percent of the estate's distributable net income is dividends and 70 percent farm income. The distribution to B and C consists of a corresponding percentage of dividends and farm income. Beneficiary C, a resident of Iowa, must report the entire distribution of \$12,500 on a 1997 Iowa individual income tax return. Beneficiary B, a resident of Arizona, is only required to report the farm income portion of the distribution (\$8,750) on a 1997 nonresident individual income tax return, because dividends and interest are income from

intangible personal property and were not derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. See 701—subrule 40.16(5).

*k. The dividend exclusion.* Estates and trusts are eligible for the dividend exclusion allowed individual taxpayers under 26 U.S.C. Section 116 (the Iowa exclusion is \$100 for 1981). The exclusion is allocated to the estate or trust if the dividend income for the taxable year is accumulated. The dividend exclusion is allocated to the beneficiaries when all of the distributable net income for the taxable year is distributed. The distribution must not be diminished by the exclusion. The dividend exclusion is then available to the beneficiaries after the dividends distributed are added to any other dividends received by the beneficiaries during the taxable year. If there is only a partial distribution of the distributable net income of the estate or trust for the taxable year, the dividend exclusion must be prorated between the beneficiaries and the estate or trust on the basis of the percentage of the distributable net income accumulated by the estate or trust and the percentage distributed to the beneficiaries. A partial distribution of the dividends and exclusion is to be reported and used by the beneficiaries for income tax purposes in the same manner as the full distribution of dividends. See federal regulation Sections 1.116-1(a) and 1.661(c)-1.

*l. The capital gains deduction.* 26 U.S.C. Section 1202(b) provides that an estate or trust is allowed a deduction for net capital gain received during the taxable year. Except for the requirement of allocation between the beneficiaries and the estate or trust, the deduction is computed in the same manner as the net capital gain deduction allowed individuals. See federal regulation Section 1.1202-1 (b). If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the net capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust. The gain distributed must not be diminished by the deduction. It must first be combined with any other capital gains and losses of the beneficiary prior to determining whether the net capital gain deduction is applicable for the beneficiary's taxable year.

If the net capital gain for the taxable year is partially allocated to corpus and partially distributed, then the net capital gain deduction is available to the beneficiaries only on the gain distributed and to the estate or trust only on the gain accumulated. A partial distribution of capital gain is treated for purposes of a beneficiary's income tax liability in the same manner as a full distribution of capital gain.

*m. The Iowa throwback rule.* Iowa Code section 422.6 allows a trust beneficiary receiving an accumulation distribution subject to the throwback rules under 26 U.S.C. Sections 665 through 668 a credit against the beneficiary's income tax liability for the Iowa income tax paid by the trust on the accumulated income distributed. The Iowa income tax paid by the trust on the accumulated income distributed is deemed distributed to the trust beneficiary, without interest, and is a credit for the year of distribution against the portion of the Iowa income tax liability of the beneficiary which is attributable to the accumulated distribution. The accumulated distribution must be adjusted by the beneficiary to reflect income subject to Iowa income tax. No refund is allowed the trust for the Iowa income tax deemed distributed to the beneficiary. The beneficiary is not allowed a refund if the tax distributed is in excess of the income tax liability attributable to the distribution. Effective for distributions made by domestic trusts in tax years beginning after August 5, 1997, there is a repeal of the throwback rules found in 26 U.S.C. Sections 665 through 668. However, the repeal of the throwback rules does not apply to trusts created before March 1, 1984, foreign trusts, or domestic trusts that were once treated as foreign trusts, except as provided by federal regulations.

*n. Federal estate tax paid on income in respect of a decedent.* For Iowa income tax purposes, Iowa Code section 422.7 makes no provision for adjusting the deduction for federal estate tax paid when the income in respect of a decedent includes interest from federal securities. Therefore, the federal estate tax paid on interest from federal securities, which is classified as income in respect of a decedent under 26 U.S.C. Section 691(a), is a deduction for Iowa income tax purposes in the taxable year the interest is received. However, interest and dividends from securities of a state or political subdivision, which are exempt from federal income tax, do not constitute the kind of income in respect of a decedent on which the deduction is computed. Since the deduction under 26 U.S.C. Section 691(c) does not apply to

income exempt from federal income tax, there is no deduction on the Iowa return for the federal estate tax paid on the exempt interest, even though under Iowa Code section 422.7 this interest is subject to Iowa income tax.

The deduction allowable in any taxable year is limited to a percentage of the total federal estate tax deduction which is determined by the ratio of income in respect of a decedent received for the year to the total amount of the net income in respect of a decedent on which federal estate tax was paid. See 26 U.S.C. Section 691(c) and federal regulation Section 1.691(c)-1 for the computation of the deduction.

**700.8(9)** *The final return—special considerations.*

*a. General rule.* In the year of closure all income received by the estate or trust is considered “other amounts properly paid or credited or required to be distributed” and must be distributed to the beneficiaries according to the terms of the governing instrument. Rev. Ruling 58-423, 2 C.B. 151 (1958). Dividends and capital gains received during the year of closure must be distributed without being diminished by the net capital gain deduction or by the dividend exclusion. See federal regulation Section 1.643(a)-3(d). 26 U.S.C. Section 642(h) provides for an exception to the general rule that net operating and capital losses are only available to the taxpayer incurring the loss. Therefore, in the year of closure, any capital loss and net operating loss carryover that remains unused by the estate or trust is passed through the estate or trust and is allowed as a deduction to the beneficiaries succeeding to the property and may be applied by carrying back the losses, but such losses cannot be carried forward. See federal regulation Section 1.642(h)-1.

If the estate or trust in the year of termination has incurred deductions in excess of gross income which do not qualify for treatment as a net operating or capital loss, such as administration expenses, the excess deductions are passed through the estate or trust and are available to the beneficiaries succeeding to the property. They are available only for the year the estate or trust terminates and only as an itemized deduction in the case of an individual beneficiary. See Revenue Ruling 58-191 1 C.B. 149 (1958). Excess deductions also include any unused net operating loss carryover, if the year the estate or trust terminates is the last carryforward year for the net operating loss. See federal regulation Section 1-642(h)-2(b).

*b. Exception to the general rule.* If in the year of termination an Iowa ancillary estate makes the required distribution of its income to the primary estate which is not being terminated, instead of to the beneficiaries of the estate, it is proper in the year of closure to treat the income as if it were accumulated by the Iowa ancillary estate. Permitting Iowa income tax to be paid on the income in this special case, in effect, allows the distribution to the primary estate to be made on a tax-paid basis. This exception to the general rule relieves the primary estate from the obligation of filing a second fiduciary return, which it would be required to do except for this special rule.

**700.8(10)** *Computation of the tax due.*

*a. In general.* The tax due on the taxable income of an estate or trust is computed by using the same tax rate schedule used for computing the individual income tax liability. The provisions of the Iowa Code relating to the maximum net income of an individual before a tax liability is incurred have no application to the tax liability of an estate or trust. The taxable income of a short taxable year is not required to be annualized for the purpose of computing the tax liability. The tax due cannot be paid in installments. It must be paid in full within the time prescribed by law.

*b. Alternative minimum tax.* Special rules for estates and trusts. The sum of the items of tax preference determined under 26 U.S.C. Section 57 shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each under the provisions of federal income tax regulation Section 1.58-3. The minimum taxable income exemption of \$17,500 allowable to an estate or trust shall be reduced to an amount which bears the same ratio to \$17,500 that the sum of the items of tax preference apportioned to the estate or trust bears to the full sum of the items of tax preference before apportionment. See federal income tax regulation Section 1.58-1(d). See rule 701—39.6(422) for the computation of the Iowa alternative minimum tax.

**700.8(11)** *Credits against the tax.*

*a. The personal exemption credit.* The estate of a decedent and a trust, whether simple or complex, are allowed the same credit against the tax as the credit allowed an individual taxpayer, that is currently \$40. The personal exemption credit is not prorated for short taxable years. The federal

exemption allowed estates and trusts under 26 U.S.C. Section 642(b), in lieu of the personal exemption for individuals, has no application to Iowa income tax.

*b. Credit for tax paid to another state or foreign country.* Iowa Code section 422.8 grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. The credit is computed in the same manner as a full-year resident under rules 701—42.6(422) and 701—42.7(422). Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. Rule 701—42.6(422) as applied to an Iowa situs trust or estate is illustrated by the following example:

Decedent A died a resident of Webster City, Iowa, on February 15. Decedent A at the time of death owned income-producing property both in Iowa and the state of Missouri. For the short taxable year ending December 31, A's estate had the following income and expenses:

Interest	\$ 5,000.00
Dividends	7,500.00
Iowa farm income	20,000.00
Missouri farm income	<u>10,000.00</u>
Iowa gross income	\$ 42,500.00
Less allowable deductions	<u>8,000.00</u>
Iowa taxable income	\$ 34,500.00
Iowa computed tax	\$2,587.87
Less personal credit	<u>40.00</u>
Tax subject to credit for foreign taxes paid	\$2,547.87
Tentative credit for tax paid to Missouri	\$ 413.00
Maximum credit	\$ 604.20
Lesser of tentative credit or maximum credit	<u>413.00</u>
Iowa tax due	\$2,134.87

A's estate paid \$413.00 income tax to the state of Missouri on the \$10,000 Missouri farm income. This is A's tentative credit.

The maximum credit on the foreign source income is \$604.20 computed as follows:

$$\frac{\text{Foreign income included in gross income } \$10,000}{\text{Total Iowa gross income } \$42,500} \times \$2,547.87^* = \$604.20$$

\*\$2,547.87 is the Iowa computed tax less the \$40.00 personal credit.

The allowable out-of-state tax credit is \$413.00, because the \$413.00 of income tax paid to Missouri (tentative credit) is less than the maximum credit of \$604.20. If the Missouri tax paid had been greater than the maximum credit, the allowable credit would have been the maximum credit.

*c. Motor vehicle fuel tax credit.* An estate or trust incurring Iowa motor vehicle fuel tax expense attributable to nonhighway uses may, in lieu of obtaining an Iowa motor vehicle fuel refund, claim as a credit against its Iowa income tax liability, the Iowa motor vehicle fuel taxes paid during the taxable year.

A copy of the Iowa motor vehicle fuel tax credit Form IA 4136 must be submitted with the fiduciary return of income to substantiate the claim for credit. Any credit in excess of the income tax due shall be refunded to the estate or trust, subject to the right of offset against other state taxes owing.

*d. Nonresident/part-year resident credit.* The nonresident/part-year resident credit is available for part-year trusts described in subrule 89.3(3) and trusts whose situs is outside Iowa. See rule

701—42.5(422) for the computation of the nonresident/part-year resident credit allowed for individuals who are either part-year residents of Iowa or nonresidents of Iowa.

*e. Other tax credits.* All other tax credits set forth in Iowa Code chapter 422, division II, are also available for any estate or trust that meets the criteria for claiming these tax credits. For tax years beginning on or after January 1, 2013, estates and trusts with a situs in Iowa which are shareholders in S corporations which carry on business within and without Iowa can take advantage of the apportionment provisions for S corporation income set forth in 701—Chapter 50. The criteria to determine whether the S corporation is carrying on business within and without Iowa is set forth in 701—subrule 54.1(4).

This rule is intended to implement Iowa Code sections 422.3 to 422.12, 422.14, 422.23, and 633.471 and chapter 452A.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1102C, IAB 10/16/13, effective 11/20/13; ARC 2661C, IAB 8/3/16, effective 9/7/16; ARC 6029C, IAB 11/3/21, effective 12/8/21; Editorial change: IAC Supplement 11/2/22; ARC 6900C, IAB 2/22/23, effective 3/29/23]

**701—700.9(422) Audits, assessments and refunds.** Rules 701—43.1(422) to 701—43.3(422) governing the audit of individual income tax returns, the assessment for tax or additional tax due, and the refund of excessive tax paid shall also govern the audit of the fiduciary income tax return and the assessment and refund of fiduciary income tax.

This rule is intended to implement Iowa Code sections 422.16, 422.25, 422.30, 422.70 and 422.73. [Editorial change: IAC Supplement 11/2/22]

**701—700.10(422) The income tax certificate of acquittance.**

**700.10(1)** *In general.* Iowa Code section 422.27 requires the income tax obligation of an estate or trust to be paid prior to approval of the final report by the court. Iowa Code section 422.27 refers only to the report of the executor, administrator or trustee. In addition, the statute makes reference only to a trustee's final report that is approved by a court. A trust that does not report to and is not subject to the supervision of a court is not required to obtain a certificate of acquittance. However, the statute's reference to a trustee who must report to the court would also include, but is not limited to, a referee in partition and the trustee of the estate of an individual bankrupt under Chapter 7 or 11 of Title 11 of the United States Code. What constitutes a trust is a matter of the trust law of the state of situs.

**700.10(2)** *The application for certificate of acquittance.* The final fiduciary return of income serves as an application for an income tax certificate of acquittance. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

**700.10(3)** *Requirements for a certificate of acquittance.* The issuance of an income tax certificate of acquittance is dependent upon full payment of the income tax liability of the estate or trust for the period of administration. This includes the obligation to pay composite return tax on distributions of nonresident beneficiaries' Iowa-source income from the estate or trust. In the case of an estate, the income tax liability of the decedent both for prior years and the year of death must be paid to the extent of the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's income tax liability according to the order of payment of an estate's debts and charges specified in Iowa Code section 633.425. If the probate property of the estate is insufficient to pay the decedent's income tax obligation in full, the department, in lieu of a certificate of acquittance, shall issue a certificate stating that the probate property is insufficient to pay the decedent's income tax liability and that the department does not object to the closure of the estate. In the event the decedent's income tax obligation is not paid in full, the closure of the decedent's estate does not release any other person who is liable to pay the decedent's income tax obligation.

**700.10(4)** *The extent of the certificate.* An income tax certificate of acquittance is a statement of the department certifying that all income taxes due from the estate or trust have been paid in full to the extent of the income and deductions reported to the department. The certificate fulfills the statutory requirements of Iowa Code section 422.27 and the Iowa income tax portion of the requirements of Iowa Code sections 633.477 and 633.479. Providing all other closure requirements are met, the certificate permits the closure of the estate or trust by the court. However, the certificate of acquittance is not a release of liability for any income tax or additional tax that may become due, such as the result of an

audit by the Internal Revenue Service or because of additional income not reported. See 701—subrule 38.2(1) for the limitations on the period of time to conduct income tax audits.

**700.10(5)** *No income tax certificate of acquittance required—exception to general rule.* If all of the property included in the estate is held in joint tenancy with rights of survivorship by a husband and wife as the only joint tenants, then in this case the provisions of Iowa Code section 422.27, subsection 1, do not apply and an income tax certificate of acquittance from the department is not required.

This rule is intended to implement Iowa Code sections 422.27, 633.425, 633.477 and 633.479.  
[Editorial change: IAC Supplement 11/2/22; **ARC 6900C**, IAB 2/22/23, effective 3/29/23]

**701—700.11(422) Appeals to the director.** An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the denial of a request for an income tax certificate of acquittance. The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period provided by law for filing such claims. 701—Chapter 7 shall govern appeals to the director. See specifically rules 701—7.8(17A) to 701—7.22(17A) governing taxpayer protests.

This rule is intended to implement Iowa Code chapter 17A and sections 421.60 and 422.28.  
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CHAPTER 23  
EMPLOYER'S CONTRIBUTION AND CHARGES

[Prior to 9/24/86, Employment Security[370]]  
[Prior to 3/12/97, Job Service Division [345] Ch 3]

**871—23.1(96) Definitions.**

**23.1(1) Accounts.**

*a. Benefit payment account.* An account maintained in the unemployment compensation fund in which are recorded (1) amounts transferred from the unemployment trust fund in the United States treasury, and receipts from other sources, and (2) amounts of benefits paid.

*b. Employer rating account.* An account of an employer which is maintained by the department for the purpose of reporting wages and recording contributions or reimbursements for that employer.

*c. Clearing account.* An account maintained in the unemployment compensation fund in which are recorded all amounts payable under Iowa Code chapter 96, including those to be transferred to (1) the unemployment trust fund, (2) the special employment security contingency fund, (3) the administrative contribution surcharge fund, and (4) the temporary emergency surcharge fund. Employer refunds are issued from this account.

*d. Balancing account.* An account set up to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

**23.1(2) Average annual taxable payroll.** The average of the total amount of taxable wages paid by an employer for insured work during the five periods (three or two periods for governmental contributory employers) of four consecutive calendar quarters immediately preceding the computation date.

**23.1(3) Calendar quarter.** The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 of each year.

**23.1(4) Computation date.** The date as of which employers' experience with respect to unemployment or unemployment risk is measured for the purpose of determining contribution rates.

**23.1(5) Employer's contribution and payroll report.** An employer's quarterly report of the wages paid to individual workers, the total and taxable wages paid and the amount of contributions due to a state unemployment insurance fund.

**23.1(6) Contributions.** Payments required by a state employment security law to be made to the state unemployment fund by reason of insured work but does not include reimbursement payments of nonprofit organizations or governmental entities in lieu of contributions.

**23.1(7) Contributor rate.** The percent constituting the rate at which the employer's payroll is taxed.

**23.1(8) Employer.** An employer subject to the employment security law of Iowa who is liable for contributions and subject to the experience rating provisions of the law or is liable for reimbursement payments in lieu of contributions. (See Iowa Code section 96.19(16).)

**23.1(9) Experience.** An employer's record with respect to contributions paid, benefits charged, and taxable wages reported.

**23.1(10) Experience rating.** A method for determining the contribution rates of individual employers on the basis of the factors specified in the state employment security law for measuring employers' experience with respect to unemployment or unemployment risk.

**23.1(11) to 23.1(13) Reserved.**

**23.1(14) Federal unemployment tax.** The tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

**23.1(15) Federal Unemployment Tax Act.** Subchapter C of Chapter 23 of the Internal Revenue Code which relates to the federal unemployment tax.

**23.1(16) Federal unemployment tax return.** A report by an employer to the Internal Revenue Service of the amount of federal unemployment tax due and payable with respect to wage payments to workers during the calendar year.

**23.1(17) Reserved.**

**23.1(18) Funds.**

*a. Administrative contribution surcharge fund.* A special fund in the state treasury, established by state law, as a repository for an employer surcharge levied to meet the operational cost of certain state workforce development offices. Referred to in subrule 23.40(2).

*b. Administrative funds.* Funds made available from federal, state, local and other sources to meet the cost of state workforce development administration.

*c. Contingency fund.* An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state workforce development divisions arising from increases in workload or other specified causes.

*d. Employment security administration fund.* A special fund in the state treasury, established by state law, in which are deposited moneys granted by the United States Department of Labor, manpower administration and moneys from other sources, for the purpose of paying the cost of administering the state workforce development program.

*e. Special employment security contingency fund.* A special fund in the state treasury, established by state law, for moneys received from employers in payment of interest and penalties on delinquent contributions and reports.

*f. Temporary emergency surcharge fund.* A special fund in the state treasury, established by state law, for use in the event an employer surcharge is levied to pay interest on a federal government loan to the unemployment compensation fund. Referred to in subrule 23.40(3).

*g. Title V funds.* Funds appropriated by Congress to pay unemployment benefits under Title V of the United States Code to federal civilian and military employees.

*h. Unemployment compensation fund.* A special fund established under an employment security law for the receipt and management of contributions and the payment of unemployment insurance benefits. Included in this fund are moneys in the benefit payment account, clearing account, and unemployment trust fund account.

*i. Unemployment trust fund.* A fund established in the treasury of the United States which contains all moneys deposited with the treasury by the 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.

**23.1(19) Indian tribe.** Indian tribe has the same meaning given to the term by Section 4(e) of the federal Indian Self-Determination and Education Assistance Act, and shall include any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

**23.1(20) to 23.1(23)** Reserved.

**23.1(24) Liability determination.** A determination as to whether an employing unit is a subject employer and whether services performed for it constitute employment as defined under the employment security law.

**23.1(25) Liability report.** A report required of all employing units in a state, which gives the information on which the state employment security agency bases its determination as to whether the employing unit is liable under the state employment security law.

**23.1(26) Subject employer.** An employing unit which is subject to the contribution provisions of a state employment security law.

**23.1(27) Tax.** (See “Contributions.”)

**23.1(28) Unemployment compensation fund.** The unemployment compensation fund established by this chapter to which all contributions or payments in lieu of contributions are required to be deposited and from which all benefits provided under Iowa Code chapter 96 shall be paid. (See “Funds.”)

**23.1(29)** Reserved.

**23.1(30) Quarterly wage report.** A report that generates after the employer has electronically submitted its quarterly contribution and payroll.

**23.1(31) Quarterly wage detail.** A report listing workers and their wages by social security number.

This rule is intended to implement Iowa Code sections 96.7(2) “c”(3), 96.7(7) “b,” 96.11(1) and 96.19(1).

[ARC 3401C, IAB 10/11/17, effective 11/15/17]

**871—23.2(96) Definition of wages for employment during a calendar quarter.**

**23.2(1)** Unless the context otherwise requires, terms used in rules, forms, and other official pronouncements issued by the department shall have the following meaning:

**23.2(2)** Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The employer’s contribution and payroll shall be used as prima facie evidence of when the wages were paid. If the wages are not listed, they shall be considered as paid:

- a. On the date appearing on the check.
- b. On the date appearing on the notice of direct deposit.
- c. On the date the employee received the cash payment.
- d. On the date the employee received any other type of payment in lieu of cash.

**23.2(3)** Wages payable means wages earned and unpaid. (See section 96.19(41).)

**23.2(4)** Wages is the name by which the remuneration for employment is designated and the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, commission, or it may be paid on an hourly, daily, weekly, monthly or annual basis. Remuneration paid in goods or services shall be computed on the basis of the fair value of the goods or services at the time of payment.

**23.2(5)** When the cash value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates specially determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

**23.2(6)** Cash value of room and board.

a. If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in Iowa Code section 96.19(18), the reasonable cash value of same shall be deemed wages subject to contribution.

b. Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in paragraphs “d” and “e” of this subrule.

c. In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph “d” of this subrule.

Full board and room per week . . . . .	\$300.00
Meals (without lodging) per week . . . . .	100.00
Meals (without lodging) per day . . . . .	20.20
Lodging (without meals) per week . . . . .	198.00
Lodging (without meals) per day . . . . .	40.00
Individual meals:	
Breakfast . . . . .	4.50
Lunch . . . . .	5.30
Dinner . . . . .	10.50
A meal not identifiable as either breakfast, lunch or dinner . . . . .	4.50

d. The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with paragraph “c” of this subrule, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

*e.* If the department determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph “*c*” of this subrule, the employer’s payroll and contribution reports to the department shall thereafter show the value of such remuneration as determined by the department.

*f.* Notwithstanding the provisions of this paragraph, the cash value of meals which are provided by and for the convenience of the employer on the business premises of the employer shall not be deemed as insured wages under chapter 96 of the Iowa Employment Security Law. Lodging furnished by the employer, for the convenience and on the business premises of the employer, shall not be considered wages if the employee is required to accept the lodging as a condition of employment.

This rule is intended to implement Iowa Code section 96.19(41).

[ARC 3342C, IAB 9/27/17, effective 11/1/17; ARC 3402C, IAB 10/11/17, effective 11/15/17]

### **871—23.3(96) Wages.**

**23.3(1)** “*Wages*” means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 871—23.2(96).

**23.3(2)** The term “wages” shall not include:

*a. Subsistence payments.* The amount of payment made by an employer to its employee, which is in addition to the employee’s regular wages and is paid for the sole purpose of compensating the employee for expenses inherent in the performance of services by the employee away from the regular base of operation of the employer and employee, commonly referred to as subsistence pay.

*b. Travel and other ordinary and necessary expenses.* Amounts paid specifically for travel or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer’s business are not wages. Travel and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts if both wages and expense allowances are combined in a single payment.

*c. Employer’s payments to persons performing military services.* Cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

*d. Sick pay.*

(1) “Wages” shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system. The plan or system must provide sick pay for the employees of the employer or a class or classes of the employer’s employees. The plan may include dependents.

(2) In the absence of a plan or system any amounts paid by or on behalf of an employer on account of sickness shall not be included after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

*e. Supplemental unemployment benefit plan (SUB).* The term “wages” shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ, under a plan or system established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit’s employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits. Such plan shall contain the following features:

(1) The employer pays into a separately established trust fund or similar account an amount per hour (or amount equivalent) worked by the employees covered by the agreement until the maximum amount called for has been reached. The plan specifically provides for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument.

(2) These payments made by the employer into the trust fund or similar account are not subject to recovery by the employer before the satisfaction of all liabilities to employees covered by the plan.

(3) The trust fund or similar account is to be used to pay supplemental unemployment benefits to employees over and above any sum to which they might be entitled under the provisions of a state employment security law.

(4) That the agreement shall provide that such employee is not entitled to receive any payment from the trust fund or similar account unless the employee is also concurrently eligible for benefits under a state employment security law.

(5) The plan requires that benefits are to be determined according to objective standards. Thus a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely at the discretion of the administrator of the fund.

(6) That the employee has no vested right in any of the moneys paid into the trust fund or similar account except as the employee may qualify for benefits under the terms of the agreement.

(7) That any payment made to or on behalf of an employee be from and to a trust fund or similar account described in Section 401(a) of the United States Internal Revenue Code title 26 of 1970 which is exempt from tax under Section 501(a) of said Code.

(8) The employer shall seek approval of its plan by petitioning that its plan be designated as a supplemental unemployment benefit (SUB) plan in the manner provided for petitioning for a declaratory ruling. The employer should include a written copy of its plan in the petition for declaratory ruling. The department will respond in the manner provided for declaratory rulings.

*f. Officers of corporation.* The term “employment” shall not include wages paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such services are required to be covered under this chapter of the Code as a condition to receiving a full tax credit against the tax imposed by the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3301-3309).

*g. Remuneration paid by state or political subdivision.* The term “employment” shall not include wages paid by this state or any of its political subdivisions or by an Indian tribe to:

(1) An elected official,

(2) A member of a legislative body,

(3) A member of the judiciary of a state or political subdivision,

(4) A member of the state national guard or air national guard,

(5) An employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency, or

(6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law which ordinarily does not require duties of more than eight hours per week.

See rule 871—23.71(96) for further definition of exemptions (1) through (6).

*h. Sole proprietorship or partnership drawing accounts.* The term “wages” shall not include any of the following:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

(2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.

(3) Remuneration for services which are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.

*i. Payments into 401K and other deferred compensation plans.* Payments made by an employer to a deferred compensation plan, established to provide for an employee’s retirement, are not wages subject to contributions unless the payments were deducted from the employee’s pay through a salary reduction agreement. In circumstances where both the employer and the employee contribute to the plan, the employer’s share is not wages unless the employee would receive a cash payment if the employee chose not to participate in the plan.

*j. Remuneration paid to members of limited liability companies based on membership interest.* The term “wages” shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the company. The term “wages” shall not include any remuneration for services performed in lieu of a contribution of cash or property to acquire a membership interest in the limited liability company. See Iowa Code sections 96.19(18a)(9) and 96.19(41e). If the amount of remuneration attributable to membership interest or the purchase of a membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

*k. Inmates of correctional institutions.* The term “employment” shall not include wages paid for services performed by an inmate of a correctional institution. Persons in work release programs are considered inmates and their wages are not reportable. Remuneration paid to residents of halfway houses is reportable.

**23.3(3)** The term “wages” shall include:

*a. Small business corporation remuneration.* Remuneration paid to officers of “subchapter S” corporations for services performed in Iowa shall be deemed to be wages. Any corporate dividends must be approved and recorded in the corporate minutes prior to payment of such dividends. Remuneration to shareholders shall not be deemed to be dividends if such remuneration is paid regularly, either weekly or monthly, and is not in proportion to such shareholder’s amount of stock, or in proportion to such shareholder’s investment in the corporation. Corporate dividends are not considered wages. Ordinary income distributions as reported on IRS Form K-1 will not be considered to be wages provided that distributions are made proportionate to stock ownership or shareholder’s investment, and provided that corporate officers performing services for the corporation have received appropriate remuneration for services performed as defined by the Internal Revenue Service and the remuneration is reported as wages. See paragraph 23.3(2) “f” for possible exclusion of wages paid to corporate officers who are majority stockholders.

*b. Wages of employees hired with equipment.* Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee’s services, if specified in the contract of hire, shall be considered wages. If the contract of hire does not specify the employee’s wages, or the value of the wages agreed upon under the contract of hire is not a fair value, the department shall determine the employee’s wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

*c. Union members.* Members of a union, subject to the direction and control of the union and acting on behalf of the union, are considered employees of the union with respect to the services performed. Payments made to them by the union as reimbursement for time lost from their regular employment are considered wages.

*d. Cafeteria plans.* A cafeteria plan is a set of benefit options offered by the employer to employees or to a class of employees. A particular benefit in a cafeteria plan will be considered to be “wages” subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered “wages” subject to contributions unless the benefit is specifically excluded from the definition of “wages” in Iowa Code subsection 96.19(41).

*e. Personal use of company vehicle.* The cash value of personal use of a company automobile or other vehicle is “wages” subject to contributions (tax) for Iowa unemployment insurance purposes and shall be reported to the department as wages paid in the quarter in which the personal use occurred.

This rule is intended to implement Iowa Code sections 96.5(5) “a,” 96.19(6) “a” (1) and (6), and 96.19(41).

**871—23.4(96) Wages—back pay.** A payment in the form of or in lieu of back pay to an individual (exclusive of legal fees and other litigation expenses) shall be reported by the employer as total and taxable wages paid to the individual in the quarter in which the employer actually made the payment in the form of or in lieu of back pay. A payment for back pay shall be taxable and recoverable if it meets the definition of wages contained in rule 871—23.3(96). Punitive or liquidated damages for other than lost wages, and job search expenses, are not taxable, recoverable or deductible as a back pay award.

**23.4(1)** Where the back pay wages, award or a judgment is paid as remuneration for employment by an employer into an account for an individual, the wages, award or judgment shall be considered as wages paid in the quarter in which the employer actually pays the wages, award or judgment to an account for the individual.

**23.4(2)** If an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period, and if the benefits are recovered by the department under an agreement between the employer and the individual allowing the employer to deduct and remit to the unemployment compensation fund the amount of benefits received by the individual from the payment in the form of or in lieu of back pay, the employer shall be required to report this amount to the department as total and taxable wages paid to the individual in the calendar quarter in which the amount is actually paid.

This rule is intended to implement Iowa Code sections 96.7(3) and 96.8(5).

**871—23.5(96) Gratuities and tips.**

**23.5(1)** The following criteria shall be applicable in determining whether tips are wages under the contributions provision of the Act: Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages unless required by subrule 23.5(2). If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain percent to the customer's bill for disbursement to the employees, the sums so disbursed are wages.

**23.5(2)** Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law, or when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

**23.5(3)** An accounting as used in this rule means the reporting of tips as gratuities by an employee to the employer for the purpose of deducting social security taxes or withholding taxes with the employer reporting the same on Form 941, Employer's Quarterly Federal Tax Return.

**871—23.6(96) Taxable wages.**

**23.6(1) Definition.**

The term "*taxable wages*" means the higher of the federal taxable wage base for the Federal Unemployment Tax Act (FUTA) or 66 2/3 percent of the statewide average weekly wage paid to employees in insured employment, multiplied by 52 and rounded to the next highest multiple of \$100 based upon the computation made during the previous calendar year to determine the maximum weekly benefit amounts for unemployment insurance benefits.

**23.6(2) Applicability and successorship.**

*a.* If an individual has more than one employer, each employer must pay contributions (tax) on the employee's wages up to the taxable wage base.

*b.* The employer shall not deduct any part of the contributions (tax) due on taxable wages from an employee's pay.

c. Only wages reported to the Iowa unemployment insurance program may be used in computing the employee's reportable taxable wages in Iowa.

d. A successor employer may use the taxable wages paid and reported by the predecessor employer to determine the successor employer's taxable wages if the successor employer received a transfer of experience from the predecessor employer.

e. A successor employer which received a transfer of experience may, at the successor employer's option, use the taxable wages reported by the predecessor to compute the taxable wages for the balance of the calendar year or may compute the taxable wages as if the employees acquired from the predecessor were new employees.

This rule is intended to implement Iowa Code section 96.19(37).  
[ARC 3647C, IAB 2/14/18, effective 3/21/18]

#### **871—23.7(96) New employer contribution rates.**

**23.7(1)** A contributory employer means all employers other than employers which have elected, or are required by law, to reimburse the department for benefits paid in lieu of paying contributions. An employer which has earned a "zero" rate is still considered to be a contributory employer.

**23.7(2)** A nonconstruction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than 1 percent until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters immediately preceding the computation date.

**23.7(3)** A construction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters.

**23.7(4)** Once an employer has qualified for an experience rating, the rate will be computed in accordance with the formula given in Iowa Code section 96.7. Rates will vary from 0 percent to 9 percent depending on how each employer's experience compares to the experience of all other employers.

**23.7(5)** For the purposes of this rule, an administrative contribution surcharge and a temporary emergency surcharge may be added to an employer's contribution rate.

**23.7(6)** For the purposes of this rule, the first quarter in which an employer's account will be considered chargeable with benefits will be the third quarter of the employer's liability unless the employer paid and reported no wages during the first two quarters of liability. In that case, the employer will not be considered chargeable with benefits until the first quarter in which the employer pays and reports wages. Once an employer's account has been chargeable with benefits it will be considered chargeable for rate computation purposes until it is terminated.

**23.7(7)** For the purposes of this rule, any single employer which has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity, as defined in rule 871—23.82(96), shall be assigned the contribution rate applicable to construction if 50 percent or more of the combined business activity is derived from the establishments or businesses engaged in construction activities.

This rule is intended to implement Iowa Code section 96.7.

#### **871—23.8(96) Due date of quarterly contribution and payroll.**

##### **23.8(1) Due date.**

a. Contributions shall become due and be payable quarterly on the last day of the month following the calendar quarter for which the contributions have accrued. If the department finds that the collection of any contributions from an employer will be jeopardized by delay, the department may declare the contributions due and payable as of the date of the finding.

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly wage detail, contributions, and payments in lieu

of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

**23.8(2) Regular due date.** Each covered employer subject to Iowa Code section 96.7 shall file with the department quarterly contribution and payroll on or before the due date, and any employer failing to file a quarterly when due shall be delinquent.

**23.8(3) Due date for new employer.** The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of \$1,500 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

*a.* The first contribution payment of any agricultural employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of ten or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of \$20,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

*b.* The first contribution payment of any domestic employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein the liability was established, or the last day of the month following that calendar quarter in which a total of \$1,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

**23.8(4) Due date for elective coverage.** The first contribution payment of any employing unit which elects with the written approval of such election by the department, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

**23.8(5) Due date for newly liable employer.** The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

**23.8(6) Delinquent date and penalty and interest.**

*a.* A quarterly wage detail or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file quarterly contribution and payroll on or before the due date shall pay to the department for each such delinquent quarter, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent quarters when the employer proves to the satisfaction of the department that no wages were paid.

*b.* An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

**23.8(7) Due date upon demand.** If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date

otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately payable, and shall become delinquent.

**23.8(8) Extension of time.** Upon written request filed with the department before the due date of any contribution and payroll, the department may, for good cause shown, grant an extension in writing of the time for filing and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).  
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3342C, IAB 9/27/17, effective 11/1/17]

**871—23.9(96) Delinquency notice.** Within 20 days from the delinquent date for filing employer's quarterly contribution and payroll, a delinquency notice will be sent to all employers from whom no information has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which contribution and payroll need to be made. The notice will be sent or emailed to the employer's last-known address, email address, or place of business. If the employer has sold or dissolved the business, the employer shall show the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall provide the name and address of the successor and the employer's future mailing address.

[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3342C, IAB 9/27/17, effective 11/1/17]

**871—23.10(96) Payments in lieu of contributions.**

**23.10(1)** An employer who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved shall pay to the department an amount equal to the amount of regular or extended benefits paid, including benefits which are based on wage credits transferred from another employer. If extended benefits are in effect, employers shall reimburse one-half of the extended benefits paid; except governmental employers and Indian tribes shall reimburse all extended benefits paid.

**23.10(2)** At the end of each calendar quarter, the department shall bill each reimbursable employer. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules, the department may attempt collection of the amount due including any of the following methods:

- a. Issuance of Notice of Jeopardy Assessment and Demand for Payment.
- b. Issuance of Notice of Lien.
- c. Any other actions as prescribed by the law or these rules including collection by distress warrant. Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).  
[ARC 3342C, IAB 9/27/17, effective 11/1/17]

**871—23.11(96) Identification of workers covered by the Iowa employment security law.**

**23.11(1)** Each employer shall ascertain the federal social security number of each worker employed by such employer in employment subject to the Iowa employment security law.

**23.11(2)** The employer shall report the worker's federal social security number in making any report required by the department of workforce development with respect to the worker.

**23.11(3)** If a worker failed to report to the employer such employee's correct federal social security number or fails to show the employer a receipt issued by an office of the social security board acknowledging that the worker has filed an application for an account number, the employer

shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

*a.* Each worker shall report to every employer for whom the worker is engaged in employment a federal social security number with the worker's name exactly as shown on the social security card issued to the worker by the social security board.

*b.* Each worker who has not secured an account number shall file an application for a federal social security account number on Form SS-5 of the Treasury Department, Internal Revenue Service. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves employment if such date precedes such seventh day.

*c.* If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which the worker leaves the employ of the employer, whichever is the earlier, the worker does not have a federal social security account number, and has not shown the employer a receipt issued to the worker by an office of the social security board acknowledging that the worker has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of the obligation to make an application on Form SS-5 as required in paragraph "b" of this subrule.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

**871—23.12** Reserved.

**871—23.13(96) Employer elections to cover multistate workers.**

**23.13(1) Arrangement.** The following rule shall govern the workforce development department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement.

**23.13(2) Definitions.** As used in this rule, unless the context clearly indicates otherwise:

*a.* "Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

*b.* "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

*c.* "Agency" means any officer, board, department, division, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

*d.* "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and interested agency means the agency of such jurisdiction.

*e.* "Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

*f.* "Total wages paid in covered employment," as it appears in Iowa Code section 96.7(2) for computing the benefit cost ratio, means total wages paid in covered employment, subject to contributions, as provided in Iowa Code section 96.7, and does not include wages paid by reimbursing employers whose payments to the unemployment fund, in lieu of contributions, are made in accordance with Iowa Code section 96.7.

**23.13(3) Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.**

*a.* Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily

works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

- (1) Any part of the individual's services are performed;
- (2) The individual resides; or
- (3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

*b.* The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

*c.* If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

*d.* Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

*e.* In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

**23.13(4)** *Effective period of election.*

*a. Commencement.* An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

*b. Termination.*

(1) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one particular jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph (1) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(3) Whenever an election under this rule ceases to apply to any individual, under subparagraph (1) or (2) of this paragraph the electing unit shall notify the affected individual accordingly.

**23.13(5)** *Reports and notices by the electing unit.*

*a.* The electing unit shall promptly notify each individual affected by its approved election and shall furnish the elected agency a copy of such notice.

*b.* Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall again notify the individual forthwith, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

*c.* The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where

a change in the work assigned to an individual requires such individual to perform services in a new participating jurisdiction.

[ARC 3342C, IAB 9/27/17, effective 11/1/17]

**871—23.14(96) Elective coverage of excluded services.**

**23.14(1)** An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

*a.* In no case shall an elective coverage agreement under Iowa Code section 96.8(3) be approved unless and until it has been established that the employing unit making application for elective coverage is normally and continuously engaged in a regular trade, business or occupation.

*b.* An application for elective coverage shall be disapproved if the department finds that the employing unit at the time of making the application was insolvent or expected to discontinue business for any reason within one year from the date the application is filed, or that the employing unit is not normally and continuously engaged in a regular trade, business or occupation.

*c.* The department may, on its own motion, request a written statement as to why an employing unit wishes to file an election to become a subject employer as provided for in Iowa Code section 96.8(3) “*a*” and may request evidence of financial stability.

*d.* Any written election for a period prior to the date of filing shall become binding upon approval by the department, and notification of the approval shall be forwarded to the employer. If for any reason the department does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

*e.* The effective date of the voluntary election is the date that it is received by the department.

*f.* Effect of election approval. Each approval of an election shall state the date as of which the approval is effective. The first contribution payment of any employing unit which elects to become a covered employer shall become due and shall be paid on or before the due date of the reporting period during which the conditions of becoming a covered employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval (as of which such employing unit becomes a covered employer), up to and including the last pay period in the reporting period in which the conditions of becoming a covered employer by election are satisfied.

**23.14(2)** Reserved.

[ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.15 to 23.17** Reserved.

**871—23.18(96) Nature of relationship between employer-employee.**

**23.18(1)** *Commission sales persons and insurance solicitors.* Commission sales persons generally are considered employees subject to the law regardless of the method of their remuneration unless they are independent contractors.

**23.18(2)** *Directors and officers of a corporation.* Directors who receive a reasonable fee for attending meetings and perform no other services are not employees of the corporation. Officers of associations and corporations are included as employees if they perform services. Officers of a corporation who perform services for the corporation are employees.

**23.18(3)** *Members of family.*

*a.* Services performed by an individual in the employ of a son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of a father or mother are exempt from the provisions of this Act.

*b.* Services performed by a foster parent in the employ of a foster child, by a stepparent in the employ of a stepchild, and by a child under the age of 18 years in the employ of a stepparent or foster parents are exempt from the provisions of this Act.

c. Services performed by a son or daughter over the age of 18 as an approved provider for consumer-directed care in the employ of a father or mother who is an approved consumer of a home- and community-based waiver services program are exempt from the provisions of Iowa Code chapter 96.

**23.18(4) Aliens.** This Act makes no distinction between citizens and lawful aliens. Lawful aliens in nonexempt employment are counted in determining whether the employer is subject to the Act and are covered by the contribution and benefit provision.

**23.18(5) Aged and minor employees.** Contributions are payable upon services rendered by an employee regardless of the age of the employee.

**23.18(6) Family employment.** Family employment includes parents, wife or husband and minor children under the age of 18 years working for an individual proprietor. This exclusion does not apply when the employing unit is a partnership unless an exempt relationship is held to each member of the partnership. This exclusion does not apply to corporations or to limited liability companies.

**23.18(7) Partners.** Bona fide partners are not considered employees even though they receive salaries.

**23.18(8) Apprentices-clerks.** This law makes no exceptions for persons serving a clerkship or other form of apprenticeship.

**23.18(9) Members of a limited liability company.** Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

#### **871—23.19(96) Employer-employee and independent contractor relationship.**

**23.19(1)** The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.

**23.19(2)** The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

**23.19(3)** Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

**23.19(4)** Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

**23.19(5)** The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

**23.19(6)** Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

**23.19(7)** If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

**23.19(8)** All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

**871—23.20(96) Employment—student and spouse of student.** Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) are not covered wages for claim or benefit purposes.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment are covered wages.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student are not covered wages 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.

This rule is intended to implement Iowa Code section 96.19(18)“g”(6).

**871—23.21(96) Excluded employment—student.** 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 no 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 excluded from said definition.

This rule is intended to implement Iowa Code section 96.19(18)“g”(6).

**871—23.22(96) Employees of contractors and subcontractors.**

**23.22(1)** If one employer contracts with another employing unit for any work which is part of the first employer’s usual business, the first employer is liable for any contributions based on wages paid by the second employing unit in connection with the work providing the second employing unit is not liable to pay contributions.

**23.22(2)** Employees of the second contractor are counted as employees of the first contractor while performing services on the contract for the first contractor.

**871—23.23(96) Liability of affiliated employing units.** An employing unit not qualifying as a covered employer under any other section of this law shall be a liable employer if together with one or more employing units owned or controlled by the same interest, the combined employment or quarterly gross wages (counting together the number of workers or the combined gross quarterly wages of each enterprise) would total one or more workers in a portion of a day in each of 20 different weeks or have a combined gross quarterly payroll which equals or exceeds \$1,500 in a calendar quarter.

**871—23.24(96) Localization of employment—employees covered—exemption.**

**23.24(1)** When workers perform services in more than one state, the department will review each case individually and make a determination whether or not wages are reportable to Iowa based on the following guidelines in sequence:

*a.* Services performed in a state are considered localized in that state regardless of where the employer is located. The wages are reportable to the state where the services are performed.

*b.* When a worker performs services in more than one state and the length of service in any one state is equal to or greater than a reporting period, the worker is reportable to that state. A reporting period is defined as a full calendar quarter. This rule does not apply if work is performed in multiple states during the reporting period.

*c.* Where services are performed among two or more states in a reporting period, the base of operations is considered. The base of operations is the point from which the workers start and finish their work on a regular basis and that is the state to which the wages are reportable. In this type of case, the department has the right to waive Iowa coverage to another jurisdiction (state of the base of operations) as long as the employee is properly covered by the other state.

*d.* When workers perform services in more than one state and there is no base of operations in any one state, the state from which the worker is immediately directed and controlled is the state to which the wages are reportable provided that some services are performed by the worker in that state.

*e.* If the services of the workers are not localized in a state, the base of operations is not involved or the place where services are directed and controlled is not applicable, then the wages are reportable to the state in which the worker resides provided some services are performed in that state.

**23.24(2)** Reserved.

This rule is intended to implement Iowa Code section 96.19(18)“*b.*”

**871—23.25(96) Domestic service.**

**23.25(1)** Services of a household nature performed by an individual in or about the private home of the person by whom the individual is employed or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which the individual is employed are included within the term “domestic service.”

**23.25(2)** A private home is the fixed place of abode or residence of an individual or family, including the house and the lands on which the house stands.

**23.25(3)** Services of a general household nature are those ordinarily and customarily performed as an integral part of the upkeep operation and maintenance of a dwelling, residence or private home. In general, covered services of a household nature in or about a private home include services rendered by workers such as cleaning people, cooks, maids, housekeepers, caretakers, yard workers and similar domestic workers. In addition, services performed by babysitters, nannies, health aides and similar workers for members of the household are covered.

**23.25(4)** The services enumerated above are not covered under the term “domestic service” if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, offices or other commercial enterprises.

**23.25(5)** The term “domestic service” does not include the service of a skilled mechanic engaged in recognized independent craft not habitually rendered as a part of ordinary household duties. In situations where it may be necessary to determine whether or not an employer-employee relationship exists between the householder and the household worker, the guidelines as set forth in 871—23.19(96) will be applied.

**23.25(6)** Reserved.

**23.25(7)** Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university where the term “school, college, or university” is taken in its commonly or generally accepted sense.

**23.25(8)** In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include but are not limited to services rendered by cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

**23.25(9)** A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed there are not covered under the term “domestic service.”

**23.25(10)** Reserved.

**23.25(11)** Where an individual is employed by a domestic service or home health care organization to perform domestic services in a private home, the individual is an employee of the service firm, not the householder.

This rule is intended to implement Iowa Code sections 96.19(13) and 96.19(16) “*m.*”

**871—23.26(96) Definition of a farm—agricultural labor.**

**23.26(1)** “Farm” as used in section 96.19(6) “*g*”(3) and as used in these rules means one or more plots of land not necessarily contiguous, including structures and buildings, used either primarily for raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and furbearing animals and wildlife or both such uses, if the activities conducted on the plot or plots of land have as their purpose the accomplishment of an objective which is agricultural in nature.

**23.26(2)** The definition of farm given in subrule 23.26(1) includes, but is not limited to, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities. A parcel of real property or a portion of a parcel of real property which is used primarily for the raising of nursery stock from seeds, cuttings or transplanted stock is a farm. If any parcel of real property or a portion of a parcel of real property is used both for the raising of nursery stock and for display of nursery stock or allied products for sale, the parcel or portion is not a farm if the raising is not the primary operation. A parcel of real property or a portion of a parcel of real property which is used primarily to display nursery stock for sale, or to display an allied product for sale, or both, is not a farm. Allied product, as used in this rule, includes but is not limited to, garden supplies, lawn supplies, tools, equipment, fertilizers, sprays, insecticides or pottery.

**23.26(3)** If other than incidental sales of an allied product are made in connection with a nursery, the operations in connection with the sales area are commercial operations as distinguished from ordinary farm operations and services performed with respect to the sales areas are not agricultural labor.

**23.26(4)** A plot of land used primarily for the raising of Christmas trees is a farm.

**23.26(5)** The following shall be used to determine whether or not services are defined as agricultural labor.

*a.* Services performed by an individual on a farm, in the employ of any owner, tenant or operator, in connection with the operation constitutes agricultural labor if:

(1) The services are on the farm on which the materials in their raw or natural state were produced, and

(2) Processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operation.

*b.* If the service is performed as an incident to industrial, manufacturing or commercial operation it does not constitute agricultural labor. (Example: Services performed for an insurance company in repair and construction of farm buildings do not constitute agricultural labor.)

**23.26(6)** Services performed on nonfarm property while in the employ of one who is not the owner, tenant or operator of the farm to which the operation relates or any service rendered in connection with the maintenance and repair of equipment, used in operation on the farm, as well as related collection, clerical and bookkeeping services, are not agricultural labor.

**23.26(7)** Services performed in the handling or processing of any agricultural or horticultural commodity are included as agricultural employment if performed in the employ of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only if the operator produced more than half of the commodity with respect to which the service was performed.

**23.26(8)** Aerial seeding, fertilizing, spraying, dusting, custom planting, cultivating or combining of farm acres while in the employ of any agricultural enterprise is agricultural labor. These include mixing or loading into the airplane the spraying or dusting material, as well as the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural as long as it is performed on a farm. If any of these services are performed on property other than a farm, they are not agricultural labor and are covered by the other provisions of the Iowa employment security law.

**23.26(9)** If the employer does not own or operate the farm which is being sprayed or dusted, any service related to employees in connection with maintenance and repair of the aircraft, trucks, or other equipment used in those operations, as well as related collection, clerical and bookkeeping services, are not agricultural labor and are not exempt under the Iowa employment security law.

**23.26(10)** Services performed on a farm in the employ of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm, devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry shall not be considered agricultural labor.

**23.26(11)** Executive, supervisory, administrative, clerical, stenographic, and office work are not agricultural labor although they may be rendered on a farm and in relation to a farm.

**23.26(12)** Services performed on a farm incidental to the overall commercial activities which are not incidental to ordinary farming operation or directly related to the farming operation are not agricultural labor.

**23.26(13)** Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

**23.26(14)** Services performed in agricultural employment as defined in Iowa Code section 96.19(18) "g"(3) or rule 871—23.26(96) by an agricultural employee one-half or more of any calendar month shall be considered agricultural employment the whole of that calendar month.

**871—23.27(96) Exempt employment in the employ of a church, association of churches or an organization which is operated primarily for religious purposes.**

**23.27(1)** The word "*church*" is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or a convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church related, is covered.

**23.27(2)** Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a novitiate or a house of study, training candidates to become members of religious orders. On the other hand, a church-related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) is not considered, under this Act, to be operated primarily for religious purposes.

**23.27(3)** The exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations ordinarily required to be covered by the Iowa employment security law.

**23.27(4)** A minister is ordained, commissioned, or licensed, if such minister has been vested with ministerial status in accordance with the procedure followed by the particular church denomination.

However, such minister does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

**23.27(5)** The term “*exercise of the ministry*” includes: the conduct of religious worship and the ministrations of sacerdotal functions; service performed in the control, conduct, and maintenance of a religious organization under the authority of a religious body constituting a church or church denomination, or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending such minister for a position involving nonministerial services for an organization not connected with the church); and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization do not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

**23.27(6)** Accordingly, service of a clergyman (clergywoman) as a chaplain in an orphanage or in an old-age home is excluded since such service is in the exercise of a ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service.

**23.27(7)** School coverage.

*a.* Schools that are not separately incorporated and are affiliated with a church are exempt from insured employment because their employees are in the direct employ of a church or convention or association of churches.

*b.* Schools that are separately incorporated and are affiliated with a church are exempt from insured employment if such schools are operated primarily for religious purposes.

*c.* Schools that are not affiliated with a church are covered employers with covered employment.

“*Affiliated*” as used in this rule means operated, supervised, controlled, or principally supported by a church or convention or association of churches. A school which is operated primarily for religious purposes must have as its chief and principal purpose for operation a religious orientation. The school must have as its purpose of first or highest rank of importance the religious indoctrination of its students.

This rule is intended to implement Iowa Code section 96.19(18) “*a*”(6)(a) and (c).

#### **871—23.28(96) Successor.**

**23.28(1)** Definition of “*successor employer*” as used in Iowa Code section 96.7 and these rules means an employing unit which:

*a.* Acquired the organization, trade or business, or substantially all the assets of an employing unit that was subject to the provisions of Iowa Code chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition. The acquiring employer must continue to operate the enterprise or business.

*b.* An employing unit that acquired a severable portion of the business of an employer who is subject to Iowa Code chapter 96 providing:

(1) The portion of the business or enterprise acquired would have in itself met the requirements of Iowa Code section 96.19(16) “*a*.”

(2) An application is made for a transfer of the records of the severable portion transferred within 90 days from the date of transfer.

(3) The transfer of records meets the approval of the predecessor and department and adequate information is furnished to meet the requirements.

**23.28(2)** An “*organization*,” “*trade*” or “*business*” as used in Iowa Code section 96.19(16) “*b*” is acquired if an employing unit acquires factors of an employer’s organization, trade or business sufficient to constitute an entire existing going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The question of whether an organization, trade or business is acquired is determined from all the factors of the particular case. Among the factors to be considered are:

*a.* The place of business.

- b. The staff of employees.
- c. The customers.
- d. The good will.
- e. The trade name.
- f. The stock in trade.
- g. The tools and fixtures.
- h. Other assets.

**23.28(3)** Substantially all of the assets as used in Iowa Code section 96.19(16) “b” are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment, except those retained incident to the liquidation of obligations.

**23.28(4)** A segregable and identifiable part of enterprise as used in Iowa Code section 96.7(3) “b” is acquired if an employing unit acquires factors of any employer’s organization, trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The part of the business acquired, if considered separately, would have been liable under section 96.19(16) “a.” The question of whether a distinct and severable portion is acquired is determined from all of the factors of the particular case. Among the factors to be considered are:

- a. The place of business.
- b. The staff of employees.
- c. The customers.
- d. The good will.
- e. The trade name.
- f. The stock in trade.
- g. The accounts receivable.
- h. The tools and fixtures.

**23.28(5)** “*Successor liability*” as used in Iowa Code chapter 96, and these rules, occurs for the acquiring employing unit when there is a transfer of the predecessor’s assets or other physical components necessary to continue the operation of the enterprise or business to the successor employer and the successor employing unit must continue to operate the business to the same basic extent as if there had been no change in the ownership or control of the business or enterprise.

**23.28(6)** Successor liability will be found to occur. If an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer’s lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer’s experience.

**23.28(7)** The department will utilize the following general criteria when establishing successorship in specialized cases:

a. Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit’s experience unless the lessor takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer’s experience.

b. Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

c. A franchise agreement will be treated the same as lease agreement.

d. If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer's account is placed in an inactive status subject to termination and no successorship or transfer of the employer's experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, the account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the new owner will be a successor to the predecessor's experience.

*e.* If a covered employer is forced out of business through foreclosure proceedings there will be no transfer of the employer's experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3) "b," 96.8 and 96.19(16) "b."

### **871—23.29(96) Transfer of entire business.**

#### **23.29(1) Notice of acquisition.**

*a.* Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of the notice when necessary information establishing that the acquisition occurred has been received by the department, the actual contribution and benefit experience and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must notify the department of the status change.

*b.* Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall notify the department within 30 days from the date of the transaction. All entities involved in the merger shall provide the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

**23.29(2) Contribution rate.** The successor's contribution rate for the remainder of the calendar year beginning with the date of acquisition shall be assigned as follows:

*a.* If the successor had no account prior to the transfer and the successor purchased the business of only one predecessor, or more than one predecessor with identical rates, the rate assigned will be the rate of the predecessor employer or employers.

*b.* If the successor had no account prior to the transfer and purchased the business of more than one predecessor on the same day, the final rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

*c.* If the successor had an account prior to the transfer, the rate assigned will be the successor's existing rate. However, the successor may apply for a recomputed rate based on the combined experience of the predecessor or predecessors and the experience of the successor.

This rule is intended to implement Iowa Code section 96.7(2) "b."

[ARC 3303C, IAB 8/30/17, effective 10/4/17]

**871—23.30(96) Successorship—liability for contributions and payments in lieu of contributions.**

**23.30(1)** Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

**23.30(2)** Transfers under the Bulk Sales Act, uniform commercial code of Iowa, shall not be held by the department to be exempted from the provisions of Iowa Code section 96.7. The transferee shall be held a successor to the employer account of the transferor and liable for any unpaid contributions, reimbursable benefit payments, interest, penalty, and costs owed to the department by the transferor notwithstanding any agreement between the two parties pursuant to the Bulk Sales Act, provided the transferee continues to operate the business.

This rule is intended to implement Iowa Code section 96.7.

**871—23.31(96) Transfer of segregable portion of an enterprise or business.**

**23.31(1)** *Application and required information.*

*a.* The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

- (1) Completes an electronic registration within 90 days after the date of purchase;
- (2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and
- (3) Continues to operate the acquired portion of the business.

*b.* Necessary information establishing the separate identity of the account includes but is not limited to:

- (1) Authorized agreement to the transfer by the predecessor;
- (2) Date of acquisition of the segregable portion;
- (3) Date of commencement of the segregable portion by the predecessor;
- (4) The names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred; and
- (5) The predecessor and successor names, addresses, and account numbers and information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition.

*c.* It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn at any time prior to the department's notice that the transfer has been approved.

*d.* It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn at any time prior to the department's notice that the transfer has been approved.

**23.31(2)** *Portion of reserve and payroll transferred.* When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

*a.* If the predecessor's account has been in existence less than five years prior to the acquisition or purchase date (or more than five years when records are available), the information necessary to calculate future rates will be transferred; or

*b.* If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years,

- (1) The actual taxable wages, and benefit charges attributable to the acquired portion for the five-year period immediately preceding the date of acquisition shall be transferred, plus

(2) That portion of the predecessor's benefit charges for the period commencing with the beginning date of the predecessor's account and ending five years prior to the acquisition date equal to the ratio of the taxable wages attributable to the acquired portion for the 12 completed calendar quarters immediately preceding the acquisition date to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion; or

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records attributable to the acquired portion shall be transferred; or

d. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

**23.31(3) Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.** The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

**23.31(4) Notification of approval or denial of transfer and appeals.**

a. Upon receipt of application (see subrule 23.31(1)) and accompanying information as required, the department shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year.

b. If the department finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be deemed to have been solely or primarily for such purpose if the department finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

c. Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 871—23.52(96) to 871—23.56(96).

**23.31(5) Liability of successor for contribution.** Any individual or organization, whether or not an employing unit, which in any manner acquires the organization, trade or business or substantially all of the assets thereof, and is held to be a successor, shall be liable for the payment of contribution, interest and penalty, due or accrued and unpaid by such predecessor employer, at the time of acquisition or purchase, if the department concludes that such contributions cannot be collected from the predecessor on the portion of such organization, trade or business acquired by the successor.

This rule is intended to implement Iowa Code section 96.7(3).

[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3402C, IAB 10/11/17, effective 11/15/17]

### **871—23.32(96) Mandatory and prohibited successorships.**

**23.32(1)** This rule applies to the mandatory successorship in Iowa Code section 96.7(2) "b"(2) and the prohibited successorship in Iowa Code section 96.7(2) "b"(3). If one employing unit receives the organization, trade or business, or a portion thereof of an employing unit and there is substantially common ownership, management or control of the two, the attributable unemployment experience will be transferred. This section of the law does not require a transfer of substantially all of the assets nor does it require the transferred portion to be segregable or identifiable. The acquiring employer must continue to operate the organization, trade or business or must transfer operation to an entity with substantially common ownership, management or control with the acquiring entity. Mandatory successorship also applies when the acquirer was not an employing unit prior to the transfer.

a. A transfer of staff and the business activity of that staff to an acquiring employer unit which continues to operate the portion of the business will establish mandatory successor liability.

*b.* The mandatory and prohibited successorships contained in Iowa Code sections 96.7(2) “*b*”(2) and (3) apply to corporations, limited liability companies, government or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, sole proprietorships or associations, or any other legal entity as defined in Iowa Code chapter 96.

*c.* “Substantially common ownership, management or control” is determined from the facts of a particular case. Among the factors to be considered are:

- (1) The authority to make policy decisions.
- (2) The authority to perform personnel actions.
- (3) Direction and control of the day-to-day operations.
- (4) Financial investment.
- (5) Substantial or complete ownership by the same legal entity or entities.
- (6) Ability to conduct or liability for financial transactions on behalf of the business.
- (7) Authority to commit the business assets.
- (8) Common management which may include direction or overall supervision by an individual or group of individuals.

*d.* For a mandatory full successorship the tax rate shall be established as provided in subrule 23.29(2), and for a mandatory partial successorship the tax rate shall be established as provided in subrule 23.32(4).

**23.32(2)** In determining whether or not an acquiring entity continues to operate an organization, trade or business as used in Iowa Code section 96.7(2) “*b*”(2), the following rules apply.

*a.* The acquiring entity continues the ongoing business operation (taking into account any seasonal or prior operational pattern), and continues the same business activity as the prior employer. A temporary cessation of the business activity by the acquiring entity will not constitute a discontinuance of the business.

*b.* The acquiring entity, not having operated the business, reassigns or otherwise transfers the operation of the business to a third-party entity that has substantially common ownership, management or control with the acquiring entity. The third party is considered to be continuing the operation of the original entity.

**23.32(3)** Prohibited successor liability. Successor liability is prohibited when the department finds that a legal entity that is not subject to Iowa Code chapter 96 at the time of acquisition (regardless of whether or not common ownership, management or control exists) acquires an organization, trade or business solely or primarily for the purpose of obtaining a lower rate of contribution. Factors to be considered include:

- a.* The existing employer account has a tax rate less than would be assigned to a new employer,
- b.* The cost of acquiring the organization, trade or business as compared with any potential savings in contributions costs,
- c.* The acquiring entity substantially changed the organization, trade or business after a short period of time, and
- d.* A substantial number of new employees were hired to perform duties unrelated to the organization, trade or business operated prior to the acquisition.

**23.32(4)** When a mandatory transfer of a portion of a business occurs, the successor’s experience and contribution rate will be determined as follows:

*a.* The experience transferred to the acquiring employing unit will be based on the percentage of employees moving from the predecessor to that unit.

(1) The percentage will be computed by comparing the number of employees on the successor’s first quarterly report covering a complete calendar quarter to the average number of employees on the four complete quarterly reports filed by the predecessor immediately preceding the transfer. The average number of employees will be computed using only the predecessor’s reports that have wages paid during those four quarters.

(2) Using this percentage, taxable wages and benefit charges, commencing with the beginning date of the predecessor’s account, will be transferred from the predecessor’s account to the successor’s account.

*b.* If the successor had no account prior to the transfer, the rate assigned will be the rate of the predecessor for the remainder of the calendar year beginning with the date of acquisition.

*c.* If the successor already had an account prior to the transfer, the rate for the balance of the year in which the transfer took place will be recomputed by combining the transferred experience with the employer's own experience as of the last computation date.

*d.* For the years following the year of acquisition, the rates will be computed using the experience of the employer combined with the transferred experience.

*e.* Future benefit(s) will be charged to the base period employer who reported the base period wages.

*f.* The department will issue a notification when the partial transfer has been completed. The determination will include notice to both parties as to their contribution rate for the current year.

*g.* Any rate determination resulting from a partial transfer will become final unless one or both of the parties files an appeal. For the specific procedure and requirements for perfecting an employer liability determination appeal, see rule 871—23.52(96).

*h.* In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

**23.32(5) Penalty contribution rate.** The department may assess a penalty contribution rate of 2 percent for the current year and two subsequent years for an employer that the department finds has attempted to manipulate and circumvent the proper unemployment tax rate as provided in Iowa Code sections 96.7(2) “*b*”(2) and (3) by deliberate nondisclosure of a material fact.

*a.* The employer will be notified of the penalty contribution rate.

*b.* If, after a liability determination has been issued, the department discovers, based upon new facts not available to the department at the time the determination was made, that a previously nonliable entity acquired a business solely or primarily to obtain a lower tax rate, the department will amend the original determination and assign a new employer rate and may provide a penalty contribution rate.

*c.* Interest will accrue on unpaid penalty contributions in the same manner as on regular contributions.

This rule is intended to implement Iowa Code sections 96.7(2) “*b*” and 96.16(5).  
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.33 to 23.35** Reserved.

**871—23.36(96) Predecessor—contribution rates for winding down a business.** In the case where a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor in interest and the predecessor employer continues to operate a part of the business in order to wind down or close the business after the date of transfer, the predecessor shall retain the same account number but will recompute the eligibility year, determination date, effective date, law citation and tax rate to that of a newly covered employer. For the purposes of this rule, the term “wind down wages” may exclude wages earned before the sale or transfer that were paid in the four consecutive quarters after the quarter in which the sale or transfer occurred.

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4) “*a*.”  
[ARC 8711B, IAB 5/5/10, effective 6/9/10]

**871—23.37(96) Adjustments and refunds of contributions.**

**23.37(1)** Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which the overpayment was made. The employer's wage adjustment report shall be filed electronically to show corrections to the individual wage amounts, corrections of grand totals (total wages, taxable wages and contributions), and a full explanation for the adjustment. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of

contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

**23.37(2)** If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, the employer will electronically submit a wage adjustment for the period and make payment covering all additional contributions, penalty and interest due.

*a.* If it is apparent, upon examination of any wages reported or adjusted, that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit for such overpayment.

*b.* If it is not apparent from the examination of any wages reported or adjusted that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit shall submit a request within three years from the date on which such overpayment was made. A credit shall be granted only after a review of the request which will set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit or refund for the overpayment.

**23.37(3)** The amount of the credit will be deducted from the contributions in the employer's account and credited to any outstanding account balance until the credit is used or canceled in accordance with these rules. If the employer fails to utilize the credit as provided above, the department shall, three years from the date of issuance, cancel the credit and show it as a nonrefundable credit. The department, upon request of the employer or on its own initiative, may issue a refund of the overpayment. The state comptroller is responsible for the issuance of the warrant.

**23.37(4)** When an employer requests a refund or credit of contributions paid due to an erroneous reporting of wages, the refund or credit shall be reduced by the amount of benefits paid and charged to the employer as a result of the erroneous wages.

**23.37(5)** All grounds and facts alleged in support of a claim for refunds or credit shall be clearly set forth. The employing unit shall furnish such proof in support of the claim as may be reasonably necessary at the discretion of the department to support the validity and the amount of the claim and the fact that the employing unit making the application for refund or credit is legally entitled to it.

[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3303C, IAB 8/30/17, effective 10/4/17; ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.38(96) Denial of claim for refund or credit.** A claim shall be denied if an employing unit within 30 days after written demand by the department fails to submit reasonable proof to support the validity and amount of the claim or fails to request an extension of time in which to submit the required information.

**871—23.39(96)** Reserved.

**871—23.40(96) Computation of rates for private sector employer.**

**23.40(1) Experience rating.** An employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year. Indian tribal contributory employers shall be considered private sector employers for the purpose of computing their contribution rate.

**23.40(2) Administrative contribution surcharge.**

*a.* For calendar years 2002 and 2003, each employer except a governmental entity and a 501(c)(3) nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage of the taxable wage base in effect for the rate year following the computation date which is equal to one-tenth of 1 percent of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date. The surcharge will be a three-place decimal number which is added to the contribution rate. The surcharge formula will

provide a target revenue level of no greater than \$6,525,000 annually and the percentage surcharge will be capped at a maximum of \$7 per employee.

*b.* A portion of each payment received from an employer shall be considered administrative contribution surcharge and shall be credited to the administrative contribution surcharge fund. The administrative contribution surcharge shall be collectible, and interest shall accrue on unpaid surcharge at the same rate as on regular contributions.

*c.* The portion of the employer's payment credited to the administrative contribution surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

*d.* The administrative contribution surcharge fund shall be a separate and distinct fund from the unemployment compensation fund. Interest earned on the moneys in the administrative contribution surcharge fund shall be credited to the administrative contribution surcharge fund. Moneys in the administrative contribution surcharge fund shall be appropriated by the general assembly.

**23.40(3) Temporary emergency surcharge.** If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

*a.* The emergency surcharge rate shall be added to the employer's regular contribution (tax) rate for the quarter. The add-on rate shall be a uniform percentage of each affected employer's regular contribution rate rounded to the nearest one-hundredth of a percent. The affected employers will be notified by the department of the surcharge by any appropriate means available at the time.

*b.* A portion of each payment that is received from an employer for a quarter in which the emergency surcharge is in effect shall be considered as being temporary emergency surcharge and shall be credited to the temporary emergency surcharge fund.

*c.* The portion of the employer's payment credited to the temporary emergency surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

*d.* The temporary emergency surcharge shall be used to pay the interest accrued on the trust fund money advanced to the department of workforce development by the federal government.

*e.* The director of the department of workforce development shall prescribe the manner and the amount of the surcharge to be collected.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8).

**871—23.41(96) Computation date defined.** The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the taxable wages reported for the quarters prior to and ending on June 30 immediately preceding the computation date and benefit charges based on benefit warrants issued on or before June 30 immediately preceding the computation date. Delinquent reports received after September 30 immediately following the computation date shall not be used for the succeeding year's rate computation.

This rule is intended to implement Iowa Code section 96.19(8).

**871—23.42(96) Crediting of interest earned on the unemployment trust fund.** Interest received on moneys deposited with the Secretary of the Treasury of the United States shall be credited to the unemployment compensation fund.

This rule is intended to implement Iowa Code section 96.9(2) "c."

**871—23.43(96) Charging of benefits to employer accounts.**

**23.43(1) How charged.** Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which the wage credits are based were paid to the claimant.

**23.43(2) Formula for charging employer accounts.**

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period currently being used will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in the quarter will be the employer's percentage of the total wage credits in the quarter.

**23.43(3) Rule of two affirmances.**

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to and during the period in which the department is processing the reversal decision.

**23.43(4) Supplemental employment.**

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

b. An individual who voluntarily quits supplemental part-time employment without good cause and has not requalified for benefits following the voluntary quit of supplemental 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 without good cause the supplemental part-time employer. The individual and the supplemental part-time employer which was voluntarily quit without good cause shall be notified on Form 65-5323 or 60-0186, Decision of the Workforce Development Representative, that benefit payments which are based on the wages paid by the supplemental part-time employer shall not be made, and benefit charges shall not be assessed against the supplemental part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the supplemental part-time employer, the wages paid in the supplemental part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

**23.43(5) Sole purpose.** 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. No charge shall accrue to the account of the former voluntarily quit employer.

**23.43(6) Reserved.**

**23.43(7) Department-approved training.** A claimant who qualifies and is approved for department-approved training (see rule 871—24.39(96)) shall continue to be eligible for benefit

payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

**23.43(8)** *Ten times the weekly benefit amount in insured work requalification.*

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.

c. The requalification and transfer of charges shall occur for the employer if the requalifying employment is earned with an out-of-state covered employer. The transfer of charges shall be made to the balancing account.

d. Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work, was discharged or with whom the individual failed to apply or accept suitable work, will not accrue any charges.

e. Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in subrule 23.43(8), paragraph "a," has been met. Verification of employment may be completed through the records of the department or by using any method establishing proof of the necessary wage credits, including the following:

(1) An employment verification form, 60-0227, is an affidavit prepared in duplicate stating: the insured employer's name, mailing address, the starting date of employment, and wages paid subsequent to that date. The form must be signed by the claimant alleging that the facts are correct. Any misrepresentation in the form may result in overpayment, fraud charges and administrative penalty any or all thereof. A copy of the form must be mailed to the employer or employers for verification. The employer should review the information on the form and certify that it is either correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the form within five days of date mailed, the information on the form will be presumed to be correct.

(2) Employment check stubs may be used in conjunction with the employment verification form, 60-0227, to indicate the requalifying period.

**23.43(9)** *Combined wage claim transfer of wages.*

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer, except for reimbursable employers.

d. When Iowa is the paying state on an interstate claim and Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.

**23.43(10)** Reserved.

**23.43(11)** *Extended benefits.*

a. Fifty percent of the amount of each week of extended benefits paid to an individual in accordance with rule 871—24.46(96) shall be charged against the account of the employer which is chargeable for the extended benefits; however, 100 percent of the amount of each week of extended benefits paid to an individual shall be charged against the account of the Indian tribal and governmental contributory or reimbursable employer which is chargeable for the extended benefits.

b. The lack of a one-week waiting period prohibits this state from receiving a payment from the U.S. Department of Labor for 50 percent of the amount of the first week of extended benefits paid to an individual. This amount shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

c. In the event that a payment from the U.S. Department of Labor for 50 percent of any week of extended benefits paid to an individual is reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the amount of the reduction shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

**23.43(12)** *Charging of benefits paid to individuals employed by two or more employers.*

a. Whenever wage reports submitted to the department show the employment of an individual by more than one employer in the same calendar quarter, benefits shall be charged to each employer's account in the same proportion as wages paid in the quarter.

b. Benefits for partial unemployment shall be charged in the same manner as benefits for total unemployment, except that no charges shall be made against the account of the base period contributory or reimbursable employer which continues to employ the individual on the same basis that the employer employed the individual during the individual's base period.

**23.43(13)** *Government contributory charges.* For the purpose of determining the base rate for government contributory employers, a percentage of all benefits that are paid but are not chargeable to employer accounts because of various provisions of the law, will be considered as belonging to government contributory employers. The percentage of the nonchargeable benefits considered to be attributable to government contributory employers for each calendar year will be determined by the ratio of the benefits actually charged to government contributory accounts for the year to the total benefits charged to all contributory accounts for the year.

**23.43(14)** *Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience.* Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim, Form 65-5317, in a timely manner to receive relief from the charges. The relief of charges shall apply to both contributory and reimbursable employers.

**23.43(15)** *Disaster relief.* An employer shall not be charged with benefits for unemployment that is directly caused by a disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of regular benefits. The employer may protest the charges on the Notice of Claim, Form 65-5317, or the Quarterly Charge

Statement. The employer must protest the charges within 30 days after the date of mailing of the Quarterly Charge Statement.

This rule is intended to implement Iowa Code sections 96.3(7), 96.5(1), 96.6(2), 96.7, 96.8(5), 96.9(5), 96.11(1), 96.16(4), and 96.29.

[ARC 3402C, IAB 10/11/17, effective 11/15/17; ARC 4832C, IAB 12/18/19, effective 1/22/20]

**871—23.44(96) Benefits payments.**

**23.44(1) Overpayments.** If a claimant is overpaid benefits, the employer will be relieved of benefit charges to such employer's account.

**23.44(2)** The employer shall not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the department.

**23.44(3)** Option of reimbursable credit or refund for an overpayment. The department shall credit the account of the reimbursable employer for overpayments. However, the employer may request a refund in those cases where the employer determines that it cannot use the credit against future charges within a reasonable period of time.

**23.44(4)** If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund, and this credit shall include both contributory and reimbursable employers. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits unless the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, in which case the employer's account shall not be charged for the overpayment.

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2).

[ARC 6893C, IAB 2/22/23, effective 3/29/23]

**871—23.45 and 23.46** Reserved.

**871—23.47(96) Termination of accounts because of no wage reports.**

**23.47(1)** If an employer discontinues business or continues business without employment, the employer may request that the employer's account be placed in an inactive status. Upon determination of an inactive status, the department shall notify the employer that the employer's account has been placed in an inactive status and that the employer is not required to file quarterly reports. However, the employer must notify the department if the employer resumes paying Iowa wages.

**23.47(2)** If the department finds that an employer has discontinued business or is no longer paying wages, the department may on its own motion place the account in an inactive status. However, the employer must notify the department if the employer resumes paying Iowa wages.

**23.47(3)** If prior to termination, an inactive account is found to have paid wages in any quarter, the employer account shall be reactivated, reports shall be secured for all quarters the account was inactive, including no wage reports for quarters for which there was no employment, and the account shall receive an experience rating; provided, the account has been in existence long enough to qualify for an experience rating.

**23.47(4)** If, on the rate computation date, the department finds that an employer has not paid wages during the eight consecutive calendar quarters immediately preceding the computation date, the employer's account shall be terminated effective the January 1 following the computation date. However, if the employer pays wages after the computation date and prior to the following January 1, the employer's account shall not be terminated, and the employer will receive an assigned rate or an experience rating.

**23.47(5)** If an employer has filed eight consecutive reports with zero wages, the account may be placed in inactive status.

This rule is intended to implement Iowa Code sections 96.7(2) "c" and "d" and 96.8(4) "b."

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

**871—23.48(96) Previously covered employers.** If a contributory employer's account has been properly terminated and the employer is again determined liable or a reimbursable employer again elects to be contributory, the employer shall receive a new account number and be treated the same as a newly covered employer.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.  
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3247C, IAB 8/2/17, effective 9/6/17]

**871—23.49 and 23.50** Reserved.

**871—23.51(96) Payments in lieu of contributions.**

**23.51(1)** Each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

**23.51(2)** The payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid and charged to such employer's account. Government and Indian tribal reimbursable employers will be charged all of the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

**871—23.52(96) Employer liability appeal.**

**23.52(1)** An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge with the department of inspections and appeals.

**23.52(2)** The appeal shall be in writing stating:

- a. The name, address and Iowa employer account number of the employer.
- b. The name and official position of the person filing the appeal.
- c. The decision which is being appealed.
- d. The grounds upon which the appeal is based.

**23.52(3)** The appeal shall be addressed or delivered to: Department of Workforce Development, Tax Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage on appeals filed by mail. Appeals transmitted by facsimile that are received by the tax bureau after 11:59 p.m. central time shall be deemed filed as of the next regular business day.

**23.52(4)** Unless otherwise required, all determinations by the tax bureau will be sent by regular mail or email, depending on how the employer elected to receive correspondence. The determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges, Form 65-5324.

**23.52(5)** If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax bureau may write to the employer and further explain the decision. If the employer still desires a hearing before an administrative law judge, the employer should notify the department within 30 days of the date of the letter from the department.

**23.52(6)** Upon receipt of a request for hearing, the tax bureau will ask the department of inspections and appeals to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

**23.52(7)** In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then

no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

[ARC 3303C, IAB 8/30/17, effective 10/4/17]

#### **871—23.53(96) Rate appeal and eligibility decision reversal.**

**23.53(1)** An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 871—23.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

*a.* An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The department will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

*b.* The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

*c.* The employer's payment of contributions at the disputed rate in the circumstances described in 23.53(1) "b" will not be an acquiescence of the disputed rate.

*d.* The employer, in the circumstances described in 23.53(1) "b," must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

*e.* If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

**23.53(2)** Reserved.

#### **871—23.54(96) Payment of disputed assessments.**

**23.54(1)** Payment of a disputed assessment is held to be an acquiescence in the assessment only when a timely appeal is not filed.

**23.54(2)** An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file quarterly contribution and payroll for all quarters for which the employer is held liable regardless of any appeal. Full payment of the disputed assessment or amount estimated to be owed by the employing unit shall be submitted.

[ARC 3402C, IAB 10/11/17, effective 11/15/17]

#### **871—23.55(96) Burden of proof.**

**23.55(1)** The burden of proof in all employer liability cases shall rest with the employer.

**23.55(2)** The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the

employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

**23.55(3)** The burden of proof in successorship and partial successorship cases for determinations and appeals shall rest with the employer that is appealing the determination of the department.

**871—23.56(96) Informal settlement.**

**23.56(1)** Pursuant to Iowa Code chapter 17A a controversy may, unless precluded by statute, at the discretion of the department be informally settled by mutual agreement of the department of workforce development and the person or employer who is or is about to be engaged in the controversy with the department. The settlement shall be effected by a written statement reciting the subject of the controversy and the proposed solution mutually agreed upon by the parties including a statement of the action to be taken, or to be refrained from, by each of the parties. The informal settlement shall constitute a waiver, by all parties, of the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation which is the subject of the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

**23.56(2)** If the parties agree to a settlement, the written statement shall be presented to the administrator of the division of unemployment insurance services for review and approval.

**23.56(3)** In the event a settlement is reached in a case which has been appealed to the courts, then the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, then the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in section 96.14(5) includes tax debts which are doubtful as to validity or as to collectibility. The department is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may or may not do so at its own discretion.

**871—23.57(96) Interest and penalty on contributions paid with adjustments submitted by employer.**

**23.57(1)** If an employer, on its own motion, submits an adjustment for an error made on previously submitted wage detail and pays any additional contributions due on the adjustment when the employer submits the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error on the original report and subsequent late payment of the contribution due on the adjustment was not the result of negligence, fraud, intentional disregard of the law or rules of the department.

**23.57(2)** If an employer submits an adjustment without payment, and payment is due, such employer will be assessed for the additional contributions plus interest as provided by law.

[ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.58** Reserved.

**871—23.59(96) Determination and assessment of estimated contributions and errors in reporting.**

**23.59(1)** If the department finds from the examination of the employer's account that the contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer; however, no interest or penalty will accrue until 30 days after the notification.

**23.59(2)** Assessment—failure to file quarterly contribution and payroll.

*a.* If any employing unit fails to file quarterly contribution and payroll as required, the department shall make an estimate based upon any information in its possession or that may come into its possession of the amount of wages paid for employment in the period or periods for which no wage detail was filed. The basis of such estimates shall compute and assess the amounts of employer contributions payable by the employing unit together with interest and penalty.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has failed to file the necessary wages paid for the quarter for which such contributions are due and payable or have been declared due and payable prior to the reporting date set out in rule 871—23.8(96), the department shall prepare estimated reports.

c. Such estimates may be made by authorized personnel in the tax bureau and shall be referred to the collection unit.

This rule is intended to implement Iowa Code section 96.7.  
[ARC 3402C, IAB 10/11/17, effective 11/15/17]

#### **871—23.60(96) Accrual of interest and penalties.**

**23.60(1)** An employer who fails to file wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 871—22.3(96) shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

**23.60(2)** The amount of the penalty for a delinquent or insufficient quarterly contribution and payroll shall be based on the total wages paid by the employer in the period for which the report was due. The penalty shall not be less than \$35 for the delinquency or the insufficient wage detail not made sufficient within 30 days of a request to do so. Insufficient wage detail is defined as a quarterly submission that does not have all social security numbers, all corresponding names, total wages for each employee, or a reporting unit number. Wage detail submitted without a correct account number, federal employer identification number, labor market information, or wage detail submitted for an unemployment account that has not yet been established by the employer or agent may be considered insufficient.

**23.60(3)** Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.19(16) "g" until 30 days after determination of such liability under the federal Unemployment Tax Act.

**23.60(4)** Interest and penalty shall not accrue in those cases where the department finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

**23.60(5)** Interest as provided under Iowa Code section 96.14 shall accrue 30 days after the quarterly billing to reimbursable employers.

**23.60(6)** The penalties applicable to contributory employers shall be applicable to employers who have been approved to make payments in lieu of contributions.

**23.60(7)** Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions which is not honored by the bank upon which it is drawn.

This rule is intended to implement Iowa Code section 96.14(2).  
[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.61(96) Collection of interest and penalties.** When wage detail is filed with contributions paid but penalties and interest due, penalties and interest may be assessed and a lien filed in the same manner as for unpaid contributions.

[ARC 3402C, IAB 10/11/17, effective 11/15/17]

#### **871—23.62(96) Rescission of interest and penalty.**

**23.62(1)** Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department within 15 days following the end of the quarter for the contribution or payroll, untimely filed or paid, and such contributions are paid in full.

**23.62(2)** Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported to another state in good faith and the contributions thereon were properly paid to the state to which the wages were reported and that said employees were fully insured during the period of unreported liability to this department.

[ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.63(96) Cancellation of interest and penalty.** The department may, at its discretion and for good cause, cancel interest and penalty upon written request for the waiver from the employer or an agent for the employer. Requests should be directed to the department at its administrative office. The employer will be advised if the request is denied.

In determining whether good cause has been shown, the department shall consider all relevant factors including but not limited to whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party which prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action.

This rule is intended to implement Iowa Code section 96.14(2).

**871—23.64(96) Refund of interest and penalty.**

**23.64(1)** Interest or penalty may be refunded only when it has been erroneously paid or overpaid. Interest or penalty erroneously collected in excess of the amount due may be credited or refunded to the employing unit or other person(s) who paid such interest or penalty subject to the following limitations.

*a.* If the department determines that a claim for refund or credit is allowable in accordance with the Iowa Code and these rules, it shall so find and make an adjustment as follows:

*b.* The amount of the overpayment shall first be applied against any unpaid liability then due from or accrued against the employing unit. The remainder of such portion of the overpayment shall be refunded to the employing unit or other person(s) by whom it was paid, or its or their successor, administrators or executors.

**23.64(2)** Reserved.

**871—23.65(96) Liens for unpaid contributions, interest, and penalties.**

**23.65(1)** Filing of liens and notice of jeopardy assessments.

*a.* If wages are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due, a Notice of Assessment and Lien will be issued to the employer.

*b.* If, 30 days after a Notice of Assessment and Lien, or a Notice of Jeopardy Assessment, has been issued (see subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business, or with the county recorder of any county in which the employer has real or personal property.

*c.* The lien, known as a Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

**23.65(2)** When the Notice of Lien is duly filed and recorded, the amount stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy is filed.

**23.65(3)** As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is issued to the employer.

**23.65(4)** The transfer, through sale, exchange, or other method, of a major portion of the assets of a delinquent employer shall not defeat or impair the lien in favor of the department, and the person acquiring such assets shall be held liable for payment of all delinquent contributions, interest, and penalties due from the delinquent employer. The department shall be made a party to any foreclosure action involving any real or personal property against which the department has or may claim a lien.

**23.65(5)** Liens against out-of-state employers and resident employers who remove themselves from the state of Iowa may be obtained in accordance with section 96.14(6).

**23.65(6)** The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in accordance with the law governing liens in the state where filed, and the costs shall be borne by the employer.

**23.65(7)** No employment security lien(s) shall be released without payment of the contributions secured except as follows:

*a.* It is shown to the department's satisfaction that the lien(s) was filed in error. If this is shown, the lien shall be at the expense of the department.

*b.* Release of the lien(s) is ordered by a judge having jurisdiction over same.

*c.* A release is necessary to facilitate payment to the department from proceeds of sale in an equity action.

*d.* A foreclosure action has been initiated by a secured creditor and it is demonstrated to the department's satisfaction all of the following:

(1) The lien of the secured creditor is properly perfected and is senior to the employment security lien.

(2) The property, both real and personal, does not exceed in value the amount of the secured lien on which the foreclosure is taken.

**23.65(8)** In such cases, the department may release its lien(s) but such release shall be only in respect to the property foreclosed upon by the secured creditor.

**23.65(9)** Interest and penalty secured by a lien may be compromised by the department at its discretion.

**23.65(10)** Upon payment of contributions, interest, penalty, and costs, the department shall execute a Satisfaction of Lien by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be provided to the employer.

This rule is intended to implement Iowa Code section 96.14(3).  
[ARC 3402C, IAB 10/11/17, effective 11/15/17]

#### **871—23.66(96) Jeopardy assessments.**

**23.66(1)** If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 871—23.8(96) for filing and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment may be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by mail to the employer's address of record and such mailing shall be a satisfactory service.

**23.66(2)** If, after a jeopardy assessment has been served, the amount assessed remains unpaid and no appeal has been filed by the employer, a notice of lien shall be recorded in the recorder's office for the county or counties in which the employer resides or owns property. A copy of the lien shall be mailed to the employer at the address of record.

**23.66(3)** If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 871—23.67(96).

**23.66(4)** After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant

instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).  
[ARC 3402C, IAB 10/11/17, effective 11/15/17]

**871—23.67(96) Distress warrants.**

**23.67(1)** In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding the sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from the employer, and to pay the proceeds of the sale over to the clerk of district court in and for the county in which the property is found. All costs of the execution shall be charged to the employer.

**23.67(2)** The sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which the property was levied upon, in accordance with the Iowa Code and the Iowa Rules of Civil Procedure.

**23.67(3)** No property belonging to the employer shall be exempt from execution.

**23.67(4)** Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

**871—23.68(26USC6402) Collection of covered unemployment compensation.** Pursuant to 26 U.S.C. 6402(f), the department shall utilize the Treasury Offset Program in order to collect covered unemployment compensation.

This rule is intended to implement 26 U.S.C. 6402(f).  
[ARC 3529C, IAB 12/20/17, effective 1/24/18]

**871—23.69(96) Injunction for nonpayment or failure to provide required information.**

**23.69(1)** In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file or provide any information required by the department.

**23.69(2)** Discretion as to whether or not to seek an injunction rests with the department.

**23.69(3)** When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice which shall provide the following information:

- a. That the department plans to seek an injunction against the employer.
- b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which required information has not been provided.
- c. The amount of indebtedness.
- d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:

- (1) The entire indebtedness is paid.
  - (2) The employer files a full and sufficient bond.
  - (3) The employer has entered into a court-approved plan providing for payment of the indebtedness.
- e. The employer has ten days in which to respond to the department.

**23.69(4)** Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department shall file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

**23.69(5)** Upon the issuance of a court order granting the injunction, the department shall proceed to periodically check to ensure that the employer is complying with the injunction order. Should the

department find that the employer is not in compliance, it will ask the court for a finding of contempt and will ask the court to impose appropriate punishment.

**23.69(6)** Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent wage detail, the department shall have the injunction dissolved.

**23.69(7)** If the employer, as the result of a court-approved payment plan, is relieved by the court of the injunction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

**23.69(8)** Any costs of these actions shall be borne by the employer.  
[ARC 3562C, IAB 1/3/18, effective 2/7/18]

#### **871—23.70(96) Nonprofit organizations.**

**23.70(1)** Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund with the department for its consideration.

**23.70(2)** The election to reimburse must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

- a. A letter of intent indicating the organization's desire to be considered for reimbursable status.
- b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service.

If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant such extension not to exceed 180 days. Included with this request for extension of time should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

- c. A corporate charter or other documents that brought the organization into being.

**23.70(3)** All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the tax bureau. The request for reimbursable status will be examined by an authorized representative.

**23.70(4)** and **23.70(5)** Reserved.

**23.70(6)** An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. The new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due, and any excess shall be refunded to the organization.

**23.70(7)** to **23.70(9)** Reserved.

**23.70(10)** The department may for good cause extend the period within which a notice of election to become a reimbursable employer or a notice to terminate reimbursable status must be filed and permit an election to be retroactive.

**23.70(11)** Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits which are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

*a.* A nonprofit organization changing its tax status from reimbursable to contributory or contributory to reimbursable will be given a new employer account number. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph “*b.*”

*b.* The experience, while under each tax status, will not be combined for rate computation purposes unless the department finds, or has reason to believe, that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status, plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization’s contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization’s contributory account to the reimbursable account to apply against the unreimbursed benefits.

**23.70(12)** Any nonprofit organization which elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization’s contributory account. The experience of the contributory account will not be merged with the nonprofit organization’s reimbursable account.

**23.70(13)** In the event that a reimbursable nonprofit organization succeeds to a contributory employer, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization’s unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

**23.70(14)** In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3401C**, IAB 10/11/17, effective 11/15/17; **ARC 3562C**, IAB 1/3/18, effective 2/7/18]

#### **871—23.71(96) Governmental entity—definition.**

**23.71(1)** The definition of a governmental entity is a state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding. An instrumentality of one or more states or political subdivisions may be a part of a state or a political subdivision or it may be independent of political entities and thereby a separate governmental entity. The definition of a governmental entity is held to include but not be limited to:

*a.* An organization or any division, department, agency, commission, or board of a state or political subdivision established by proper authorities, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

*b.* An instrumentality is one which is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity, with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

c. Political subdivisions include counties, cities, municipalities, towns, villages, townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental entities within the state of Iowa.

d. Instrumentalities shall include departments, boards, agencies, commissions, county or municipal corporations, associations and organizations of a state or a political subdivision of the state when it is operated by virtue of the authority, power, or powers conferred upon it by a state or political subdivision of the state, or when they are controlled, supervised or receive direction, expressed or implied, from a state or political subdivision of a state or such rights are vested in public authority or authorities, or the state or the political subdivision of a state has the right, expressed or implied, to control or direct the policy, operation or to influence the organizations or action of individuals, parties or interests that control those who manage or administer the affairs of such organizations.

**23.71(2)** In cases involving the status of an organization as to whether it is a state, a state instrumentality, a political subdivision of a state or a political subdivision instrumentality, the following factors may be taken into account:

a. Whether the revenues are subject to control by a state, a political subdivision of a state or an instrumentality of either.

b. They may have broad powers of taxation, appropriation or authority to levy special assessments on the land located in the district which will stand as a lien upon the property assessed.

c. It is created or existing by virtue of a state, a political subdivision of the state or instrumentality of either, which operates in the public interest, without profit to private persons, and whose purpose is presumed to be a public benefit and conducive to the public health, convenience and welfare.

d. Whether it is organized or used for a governmental purpose, or an aid in the function of government or it performs a governmental function.

e. Whether there is an expressed or implied statutory or other authority necessary or existing for the creation or use of the organization.

**23.71(3)** The term “employment” does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is: an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity or Indian tribe from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as firefighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. *City of Charles City v. Iowa Department of Job Service*, Law No. 2262, District Court for Floyd County. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

b. The provision which excludes an individual employed by a governmental entity or Indian tribe who exercises duties in a position defined in state law as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight hours per week, covers those individuals holding positions designated by, or pursuant to, state law as a policymaking or advisory position. Political subdivisions which have authority to enact ordinances or resolutions without recourse to the state legislature but under authority of state law may also establish and define such positions. The positions may qualify for the exclusion if the political subdivision has enacted an ordinance or resolution creating or designating one of its positions

as policymaking or advisory, provided power to make the ordinance or resolution is authorized or permitted by the laws of the state. If the state law or local ordinance or resolution properly designated the positions as policymaking or advisory, the exclusion is clearly applicable. Where the law or the ordinance does not clearly and specifically so categorize or label the position, other pertinent factors such as job descriptions, the qualification of individuals considered for and appointed to the position and the responsibilities involved shall be taken into account in determining the character of the position for purposes of applying the exclusion.

(1) “Policymaker” is defined as generally referring to the determination of the direction, emphasis and scope of action in the development of, and the administration of, governmental programs. Such responsibilities are confined to and inherent in jobs of the higher echelons of government.

(2) An “advisory position” is one which advises established governmental agencies and officers with respect to policy, program and administration without having authority to implement the recommendations.

(3) The word “major” in the phrase “major nontenured policymaking or advisory position” refers to high level governmental positions usually filled by appointment by the chief executive of the political entity (governor, mayor, etc.), or a council, and which involves responsibilities affecting the entire political entity, whether it be the state, county or city.

(4) The term “nontenured” is used in its usual meaning to mean that the position is not covered by merit system or civil service law or rules with respect to duration of appointment to the service.

(5) Service in a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours per week is exempted. It makes no difference whether the position is tenured or not. If the position ordinarily requires more than eight hours per week, the exclusion does not apply. The number of hours required should be determined by reference to the law establishing the position and the actual time spent by incumbents.

*c.* An elected official includes an individual appointed to serve the unexpired term of an elected position. Such an individual’s services for such period are excluded because the individual is performing excluded services.

*d.* An official elected by a body other than the public, such as by a vote by the legislature, board of supervisors, council, school board or trustees, to perform services for a government entity, such individual is not excluded from coverage.

*e.* Services performed for the state national guard or the air national guard are excluded from coverage of the employment security law only as to the services in the individual’s “military” capacity. It does not apply to any service performed in any other capacity.

*f.* If a member of the state national guard or air national guard is employed in a civilian capacity performing services for either organization as distinguished from “military” service, the civilian service would be covered as an employee of a governmental entity to the same extent as any other employee.

**23.71(4)** Exemption from “employment” for individuals performing services for a governmental entity or Indian tribe as part of an unemployment work relief or work training program. Services performed by an individual for a government entity or Indian tribe for the purpose of qualifying or repaying a welfare or relief grant will not be considered “employment” provided that:

*a.* The major purpose of the program under which the work is performed is to relieve individuals from their unemployment or poverty.

*b.* The government entity does not pay the welfare or relief grant directly to the individual but instead pays items such as rent, power bills, medical bills, etc., for the individual.

*c.* The services performed by the individuals do not displace regularly employed workers of the government entity.

This rule is intended to implement Iowa Code sections 96.7(8) and 96.19(18) “a”(6)(e) and (g).

### **871—23.72(96) Governmental entity—elective coverage and liability.**

**23.72(1)** Any governmental entity may elect to be a governmental contributory employer by filing for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities shall apply to Indian tribes. Any governmental entity failing to

file such an election will be considered as a governmental reimbursable employer. The application must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

- a. It is an application for all employees of the entity.
- b. The applicant is a "governmental entity."
- c. It sets forth the name and address of the entity.

**23.72(2)** The effective date of an elective coverage agreement filed by a government entity is the first day of the calendar year in which the election was filed.

**23.72(3)** An agreement for elective coverage shall be continued in effect from period to period unless a written application for termination has been filed with the department 30 days before the beginning of the taxable year for which such termination shall first be effective following the initial one-year period of coverage.

**23.72(4)** An applicant may withdraw an application for elective coverage prior to final approval of the application. The department may, upon written request of the applicant, cancel an elective coverage agreement which has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or was submitted by a person not having proper authorization to bind the applicant.

**23.72(5)** If a governmental entity is succeeded in whole or in part by another governmental entity, the successor may elect to continue the elective coverage agreement of the predecessor or may elect to terminate the elective coverage agreement of the predecessor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity under an approved elective coverage agreement, the elective coverage agreement of the predecessor shall be continued to the same extent as the elective coverage agreement of the successor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity not under an approved elective coverage agreement, the successor shall meet the requirements of this section if it elects to continue the elective coverage agreement of the predecessor.

**23.72(6)** The contribution rate of a governmental contributory employer shall be determined by the ranking of the governmental contributory employer's percentage of excess when compared to all other governmental contributory employers' percentage of excesses and the rate assigned to each rank as determined by the base rate of all governmental contributory employers. The base rate is determined by adding or subtracting the difference between the benefits charged and the contributions paid by governmental contributory employers since January 1, 1980 (adjusted if necessary by excess contributions from calendar years 1978 and 1979), to or from the total benefits charged to governmental contributory employers during the preceding calendar year and dividing this sum by the total taxable wages reported by governmental contributory employers during the same calendar year. The contribution rate of a governmental contributory employer shall be payable on the taxable wages paid by the governmental contributory employer.

**23.72(7)** Liability upon the sale, transfer or discontinuance of a reimbursable governmental employer.

a. If a governmental reimbursable employer sells or otherwise transfers its enterprise, business, or operation to a subsequent employing unit, and the subsequent employing unit is determined to be a successor employer, the successor employer shall become liable to the department for the predecessor governmental reimbursable employer's benefit charges that are unpaid as of the date of the sale or transfer in the event that the predecessor governmental reimbursable employer cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor governmental reimbursable employer prior to the date of the sale or transfer.

b. If a reimbursable instrumentality of either a state or a political subdivision is discontinued other than by sale or transfer, the state or the political subdivision shall reimburse the department for the reimbursable instrumentality's benefit charges that are unpaid at the time the reimbursable instrumentality was discontinued. In addition, the state or the political subdivision shall be liable to

reimburse the department for benefits paid after the discontinuance of the reimbursable instrumentality that are based on wages paid by the reimbursable instrumentality prior to the discontinuance.

This rule is intended to implement Iowa Code section 96.7(8).  
[ARC 3562C, IAB 1/3/18, effective 2/7/18]

**871—23.73(96) Governmental entities—delinquent accounts.**

**23.73(1)** Any governmental entity which is an employer and which becomes delinquent in the payment of contributions or the reimbursement of benefits shall be assessed for the same together with any interest and penalty due thereon.

**23.73(2)** Contributions are due within 30 days of the end of the quarter for which they are incurred. Reimbursable benefit payments are due 30 days after the date of the statement.

**23.73(3)** If an amount due from a governmental entity of this state remains due and unpaid for a period of 120 days after the due date, the department shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the department from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the department for the fund. However, the department shall notify the delinquent entity of the department's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

This paragraph is an exact quote from 1979 Iowa Acts, chapter 33, section 25. It is being used as a rule because it conflicts with the preceding paragraph in Iowa Code chapter 96. The preceding paragraph in section 96.14(3) states delinquency as a period exceeding two calendar quarters. The above period of 120 days is the most recent expression of the legislature.

This rule is intended to implement Iowa Code section 96.14(3) and 1979 Iowa Acts, chapter 33.

**871—23.74 to 23.81** Reserved.

**871—23.82(96) Definition of construction employer.**

**23.82(1)** Construction. The department will utilize the North America Industry Classification System manual (2017 edition) to determine which employers will be classified as construction. The manual is available on the Internet to view or download at [www.census.gov/eos/www/naics](http://www.census.gov/eos/www/naics).

*a.* The construction sector is comprised of establishments primarily engaged in the construction of buildings and other structures, heavy construction (except buildings), additions, alterations, reconstruction, installation, and maintenance and repairs. Establishments engaged in demolition or wrecking of buildings and other structures, clearing of building sites, and sale of materials from demolished structures are also included. This sector also includes those establishments engaged in blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation. The industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites. Employers that provide workers primarily for construction will be classified as construction employers.

*b.* This sector is divided into three subsectors of construction activities: (1) building construction and land subdivision and land development; (2) heavy construction (except buildings), such as highways, power plants, and pipelines; and (3) construction activity by special trade contractors.

*c.* Establishments classified in Subsector 233, Building, Developing, and General Contracting, and Subsector 234, Heavy Construction, usually assume responsibility for an entire construction project, and may subcontract some or all of the actual construction work. Operative builders who build on their own account for sale and land subdividers and land developers, who engage in subdividing real property into lots for sale, are included in Subsector 233, Building, Developing, and General Contracting. (Special

trade contractors are included in Subsector 234, Heavy Construction, if they are engaged in activities primarily relating to heavy construction, such as grading for highways.) Establishments included in these subsectors operate as general contractors, design-builders, engineer-constructors, joint-venture contractors, and turnkey construction contractors. Establishments identified as construction management firms are also included.

*d.* Establishments classified in Subsector 235, Special Trade Contractors, are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work, and work for builders and general contractors under subcontract or directly for project owners. Establishments engaged in demolition or wrecking of buildings and other structures, dismantling of machinery, excavating, shoring and underpinning, anchored earth retention activities, foundation drilling, and grading for buildings are also included in this subsector.

*e.* “Force account” construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this industry sector unless the construction work performed is the primary activity of a separate establishment of the enterprise.

*f.* The installation of prefabricated building equipment and materials, such as elevators and revolving doors, is classified in the construction sector. Installation work incidental to sales by employees of a manufacturing or retail establishment is classified as an activity of those establishments.

**23.82(2)** The term “construction” includes, but is not limited to:

*a. Land subdividing and land development.* Establishments primarily engaged in subdividing real property into lots or developing lots for sale.

*b. Residential building construction.*

(1) Single-family housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations, and repairs) of single-family residential housing units.

Building alterations, single-family—general contractors

Building construction, single-family—general contractors

Custom builders, single-family houses—general contractors

Designing and erecting, combined: single-family houses—general contractors

Home improvements, single-family—general contractors

House construction, single-family—general contractors

House: shell erection, single-family—general contractors

Mobile home repair, on site—general contractors

Modular housing, single-family (assembled on site)—general contractors

One-family house construction—general contractors

Prefabricated single-family houses erection—general contractors

Premanufactured housing, single-family (assembled on site)—general contractors

Remodeling buildings, single-family—general contractors

Renovating buildings, single-family—general contractors

Repairing buildings, single-family—general contractors

Residential construction, single-family—general contractors

Row house (single-family) construction—general contractors

Town house construction—general contractors

(2) Multifamily housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of multifamily residential housing units.

Apartment building construction—general contractors

Building alterations, residential: except single-family—general contractors

Building construction, residential: except single-family—general contractors

Custom builders, residential: except single-family—general contractors

Designing and erecting, combined: residential, except single-family—general contractors

Dormitory construction—general contractors

Home improvements, residential: except single-family—general contractors

Prefabricated building erection, residential: except single-family—general contractors

Remodeling buildings, residential: except single-family—general contractors

Renovating buildings, residential: except single-family—general contractors

Repairing buildings, residential: except single-family—general contractors

Residential construction, except single-family—general contractors

*c. Nonresidential building construction.*

(1) Manufacturing and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of manufacturing and industrial buildings.

Building alterations, industrial and warehouse—general contractors

Building components manufacturing plant construction—general contractors

Building construction, industrial and warehouse—general contractors

Clean room construction—general contractors

Cold storage plant construction—general contractors

Commercial warehouse construction—general contractors

Custom builders, industrial and warehouse—general contractors

Designing and erecting, combined: industrial—general contractors

Dry cleaning plant construction—general contractors

Factory construction—general contractors

Food products manufacturing or packing plant construction—general contractors

Grain elevator construction—general contractors

Industrial building construction—general contractors

Industrial plant construction—general contractors

Paper pulp mill construction—general contractors

Pharmaceutical manufacturing plant construction—general contractors

Prefabricated building erection, industrial—general contractors

Remodeling buildings, industrial and warehouse—general contractors

Renovating buildings, industrial and warehouse—general contractors

Repairing buildings, industrial and warehouse—general contractors

Truck and automobile assembly plant construction—general contractors

Warehouse construction—general contractors

(2) Commercial and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of commercial and industrial buildings.

Administration building construction—general contractors

Amusement building construction—general contractors

Auditorium construction—general contractors

Bank building construction—general contractors

Building alterations, nonresidential: except industrial and warehouses—general contractors

Building construction, nonresidential: except industrial and warehouses—general contractors

Casino construction—general contractors

Church, synagogue and related building construction—general contractors

Civic center construction—general contractors

Commercial building construction—general contractors

Custom builders, nonresidential: except industrial and warehouses—general contractors

Designing and erecting, combined: commercial—general contractors

Dome construction—general contractors

Farm building construction, except residential—general contractors

Fire station construction—general contractors

Garage construction—general contractors

Hospital construction—general contractors

Hotel construction—general contractors

Institutional building construction, nonresidential—general contractors  
 Mausoleum construction—general contractors  
 Motel construction—general contractors  
 Municipal building construction—general contractors  
 Museum construction—general contractors  
 Office building construction—general contractors  
 Passenger and freight terminal building construction—general contractors  
 Post office construction—general contractors  
 Prefabricated building erection, nonresidential: except industrial and warehouses—general contractors  
 Prison construction—general contractors  
 Remodeling buildings, nonresidential: except industrial and warehouses—general contractors  
 Renovating buildings, nonresidential: except industrial and warehouses—general contractors  
 Repairing buildings, nonresidential: except industrial and warehouses—general contractors  
 Restaurant construction—general contractors  
 School building construction—general contractors  
 Service station construction—general contractors  
 Shopping center construction—general contractors  
 Silo construction, agricultural—general contractors  
 Stadium construction—general contractors  
 Store construction—general contractors

*d. Highway, street, bridge and tunnel construction.*

(1) Highway and street construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of highways (except elevated), streets, roads, or airport runways, and establishments identified as highway and street construction management firms, and establishments identified as special trade contractors engaged in performing subcontract work primarily related to highway and street construction.

Airport runway construction—general contractors  
 Alley construction—general contractors  
 Asphalt paving; roads, public sidewalks and streets—contractors  
 Concrete construction; roads, highways, public sidewalks, and streets—contractors  
 Grading for highways, streets and airport runways—contractors  
 Guardrail construction on highways—contractors  
 Highway construction, except elevated—general contractors  
 Highway signs, installation of—contractors  
 Parkway construction—general contractors  
 Paving construction—contractors  
 Resurfacing streets and highways—contractors  
 Road construction, except elevated—general contractors  
 Sidewalk construction, public—contractors  
 Street maintenance or repair—contractors  
 Street paving—contractors

(2) Bridge and tunnel construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of bridges, viaducts, elevated highways and tunnels, and establishments identified as bridge and tunnel construction management firms, and establishments identified as special trade contractors primarily engaged in performing subcontract work related to bridge and tunnel construction.

Abutment construction—general contractors  
 Bridge construction—general contractors  
 Causeway construction on structural supports—general contractors  
 Highway construction, elevated—general contractors  
 Overpass construction—general contractors

Trestle construction—general contractors  
 Tunnel construction—general contractors  
 Underpass construction—general contractors  
 Viaduct construction—general contractors

*e. Other heavy construction.*

(1) Water, sewer, and pipeline construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of water mains, sewers, drains, gas mains, natural gas pumping stations, and gas and oil pipelines, and establishments identified as water, sewer and pipeline construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to water, sewer, and pipeline construction.

Aqueduct construction—general contractors  
 Conduit construction—contractors  
 Distribution lines (oil and gas field) construction—general contractors  
 Gas main construction—general contractors  
 Manhole construction—contractors  
 Natural gas compressing station construction—general contractors  
 Pipe laying—general contractors  
 Pipeline construction—general contractors  
 Pipeline wrapping—contractors  
 Pumping station construction—general contractors  
 Sewage collection and disposal line construction—general contractors  
 Sewer construction—general contractors  
 Water main line construction—general contractors

(2) Power and communication transmission line construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of electric power and communication transmission lines and towers, radio and television transmitting/receiving towers, cable laying, and cable television lines, and establishments identified as power and communication transmission line construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to power and communication line construction.

Cable laying construction—contractors  
 Cable television line construction—contractors  
 Pole line construction—general contractors  
 Power line construction—general contractors  
 Telegraph line construction—general contractors  
 Telephone line construction—general contractors  
 Television and radio transmitting tower construction—general contractors  
 Transmission line construction—general contractors

(3) Industrial nonbuilding structure construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of heavy industrial nonbuilding structures, such as chemical complexes, or facilities, cement plants, petroleum refineries, industrial incinerators, ovens, kilns, power plants (except hydroelectric plants), and nuclear reactor containment structures, and establishments identified as industrial nonbuilding construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to industrial nonbuilding construction.

Chemical complex or facilities construction—general contractors  
 Coke oven construction—general contractors  
 Discharging station construction, mine—general contractors  
 Furnace construction for industrial plants—general contractors  
 Industrial incinerator construction—general contractors  
 Industrial plant appurtenance construction—general contractors  
 Kiln construction—general contractors

Light and power plant construction—general contractors  
 Loading station construction, mine—general contractors  
 Mine loading and discharging station construction—general contractors  
 Mining appurtenance construction—general contractors  
 Nuclear reactor containment structure construction—general contractors  
 Oil refinery construction—general contractors  
 Oven construction, bakers’—general contractors  
 Oven construction for industrial plants—general contractors  
 Petrochemical plant construction—general contractors  
 Petroleum refinery construction—general contractors  
 Power plant construction—general contractors  
 Tipple construction—general contractors  
 Washeries construction, mining—general contractors  
 (4) All other heavy construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction or repairs) of heavy nonbuilding construction projects (except highway, street, bridge, tunnel, water lines, sewer lines, pipelines, and power and communication transmission lines), and industrial nonbuilding structures, and establishments identified as all other heavy construction management firms, and establishments primarily engaged in construction equipment rental with an operator, and establishments identified as special trade contractors engaged in activities primarily related to all other heavy construction.

Athletic field construction—general contractors  
 Blasting, except building demolition—contractors  
 Breakwater construction—general contractors  
 Bridle path construction—general contractors  
 Brush clearing or cutting—contractors  
 Caisson drilling—contractors  
 Canal construction—general contractors  
 Channel construction—general contractors  
 Channel cutoff construction—general contractors  
 Clearing of land—general contractors  
 Cofferdam construction—general contractors  
 Cutting right-of-way—general contractors  
 Dam construction—general contractors  
 Dike construction—general contractors  
 Dock construction—general contractors  
 Drainage project construction—general contractors  
 Dredging—general contractors  
 Earthmoving, not connected with building construction—general contractors  
 Flood control project construction—general contractors  
 Golf course construction—general contractors  
 Harbor construction—general contractors  
 Heavy equipment rental with an operator—contractors  
 Hydroelectric plant construction—general contractors  
 Irrigation projects, construction—general contractors  
 Jetty construction—general contractors  
 Land clearing—contractors  
 Land drainage—contractors  
 Land leveling (irrigation)—contractors  
 Land reclamation—contractors  
 Levee construction—general contractors  
 Lock and waterway construction—general contractors  
 Marine construction—general contractors

Missile facilities construction—general contractors  
 Pier construction—general contractors  
 Pile driving—general contractors  
 Pond construction—general contractors  
 Railroad construction—general contractors  
 Railway roadbed construction—general contractors  
 Reclamation projects construction—general contractors  
 Reservoir construction—general contractors  
 Revetment construction—general contractors  
 Rock removal-underwater—contractors  
 Sewage treatment plant construction—general contractors  
 Ski tow erection—general contractors  
 Soil compacting service—contractors  
 Submarine rock-removal—general contractors  
 Subway construction—general contractors  
 Tennis court construction, outdoor—general contractors  
 Timber removal-underwater—contractors  
 Trail building—general contractors  
 Trailer camp construction—general contractors  
 Trenching—contractors  
 Waste disposal plant construction—general contractors  
 Water power project construction—general contractors  
 Water treatment plant construction—general contractors  
 Waterway construction—general contractors  
 Wharf construction—general contractors

*f. Plumbing, heating and air conditioning contractors.* Establishments primarily engaged in one or more of the following: (1) installing plumbing, heating, and air-conditioning equipment; (2) servicing plumbing, heating, and air-conditioning equipment; and (3) the combined activity of selling and installing plumbing, heating, and air-conditioning equipment. The plumbing, heating, and air-conditioning work performed includes new work, additions, alterations, and maintenance and repairs.

Air system balancing and testing—contractors  
 Air conditioning, with or without sheet metal work—contractors  
 Boiler cleaning—contractors  
 Boiler erection and installation—contractors  
 Drainage system installation (cesspool and septic tank)—contractors  
 Dry well (cesspool) construction—contractors  
 Fuel oil burner installation and servicing—contractors  
 Furnace repair—contractors  
 Gasline hookup—contractors  
 Heating equipment installation—contractors  
 Heating, with or without sheet metal work—contractors  
 Lawn sprinkler system installation—contractors  
 Mechanical contractors  
 Piping, plumbing—contractors  
 Plumbing and heating—contractors  
 Plumbing repair—contractors  
 Plumbing, with or without sheet metal work—contractors  
 Solar heating apparatus—contractors  
 Sprinkler system installation—contractors  
 Steam fitting—contractors  
 Sump pump installation and servicing—contractors

Ventilating work, with or without sheet metal work—contractors

Water pump installation and servicing—contractors

Water system balancing and testing—contractors

Work combined with heating or air conditioning—contractors

*g. Painting and wall covering contractors.* Establishments primarily engaged in interior or exterior painting and interior wall covering. The painting and wall covering work includes new work, additions, alterations, and maintenance and repairs.

Bridge painting—contractors

Electrostatic painting on site (including lockers and fixtures)—contractors

House painting—contractors

Painting of buildings and other structures, except roofs—contractors

Paper hanging—contractors

Ship painting—contractors

Traffic lane painting—contractors

Wallpaper removal—contractors

Whitewashing—contractors

*h. Electrical contractors.* Establishments primarily engaged in one or more of the following: (1) performing electrical work at the site; (2) servicing electrical equipment at the site; and (3) the combined activity of selling and installing electrical equipment. The electrical work performed includes new work, additions, alterations, and maintenance and repairs.

Cable splicing, electrical—contractors

Cable television hookup—contractors

Communication equipment installation—contractors

Electric work—contractors

Electrical repair at site of construction—contractors

Electronic control system installation—contractors

Highway lighting and electrical signal construction—contractors

Intercommunication equipment installation—contractors

Sound equipment installation—contractors

Telecommunications equipment installation—contractors

Telephone and telephone equipment installation—contractors

*i. Masonry, stone work, tile setting and plastering.*

(1) Masonry and stone contractors. Establishments primarily engaged in masonry work, stone setting, and other stone work. The masonry work, stone setting and other stone work performed includes new work, additions, alterations, and maintenance and repairs.

Bricklaying—contractors

Cement block laying—contractors

Chimney construction and maintenance—contractors

Concrete block laying—contractors

Foundations, building of: block, stone or brick—contractors

Marble work, exterior construction—contractors

Masonry—contractors

Refractory brick construction—contractors

Retaining wall construction: block, stone or brick—contractors

Stone setting—contractors

Stone work erection—contractors

Tuck pointing—contractors

(2) Drywall, plastering, acoustical, and insulation contractors. Establishments primarily engaged in drywall, plaster work, acoustical and building insulation work. The drywall, plaster work, acoustical and insulation work performed includes new work, additions, alterations, and maintenance and repairs.

Acoustical work—contractors

Ceilings, acoustical installation—contractors

Drywall construction—contractors  
Insulation installation, buildings—contractors  
Lathing—contractors  
Plastering, plain or ornamental—contractors  
Solar reflecting insulation film—contractors  
Stucco construction—contractors  
Taping and finishing drywall—contractors

(3) Tile, marble, terrazzo, and mosaic contractors. Establishments primarily engaged in (1) setting and installing ceramic tile, marble (interior only), terrazzo, and mosaic, or (2) mixing marble particles and cement to make terrazzo at the job site. The tile, marble, terrazzo, and mosaic work performed includes new work, additions, alterations, and maintenance and repairs.

Fresco work—contractors  
Mantel work—contractors  
Marble installation, interior; including finishing—contractors  
Mosaic work—contractors  
Terrazzo work—contractors  
Tile installation, ceramic—contractors  
Tile setting, ceramic—contractors

*j. Carpentering and floor contractors.*

(1) Carpentry contractors. Establishments primarily engaged in framing, carpentry, and finishing work. The carpentry work performed includes new work, additions, alterations, and maintenance and repairs.

Carpentry work—contractors  
Folding door installation—contractors  
Framing—contractors  
Garage door installation—contractors  
Joinery, ship—contractors  
Ship joinery—contractors  
Store fixture installation—contractors  
Trim and finish—contractors  
Window and door (prefabricated) installation—contractors

(2) Floor laying and other floor contractors. Establishments primarily engaged in the installation of resilient floor tile, carpeting, linoleum, and wood or resilient flooring. The floor laying and other floor work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalt tile installation—contractors  
Carpet laying or removal service—contractors  
Fireproof flooring construction—contractors  
Floor laying, scraping, finishing and refinishing—contractors  
Flooring, wood—contractors  
Hardwood flooring—contractors  
Linoleum installation—contractors  
Parquet flooring—contractors  
Resilient floor laying—contractors  
Vinyl floor tile and sheet installation—contractors

*k. Roofing, siding, and sheet metal contractors.* Establishments primarily engaged in the installation of roofing, siding, sheet metal work, and roof drainage-related work, such as downspouts and gutters. The roofing, siding and sheet metal work performed includes new work, additions, alterations, and maintenance and repairs.

Architectural sheet metal work—contractors  
Ceilings, metal; erection and repair—contractors  
Coppersmithing, in connection with construction work—contractors  
Downspout installation, metal—contractors

Duct work, sheet metal—contractors  
 Gutter installation, metal—contractors  
 Roof spraying, painting or coating—contractors  
 Roofing work, including repairing—contractors  
 Sheet metal work: except plumbing, heating or air conditioning—contractors  
 Siding—contractors  
 Skylight installation—contractors  
 Tinsmithing, in connection with construction work—contractors

*l. Concrete contractors.* Establishments primarily engaged in the use of concrete and asphalt to produce parking areas, building foundations, structures, and retaining walls and the use of all materials to produce patios, private driveways and private walks. The concrete work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalting of private driveways and private parking areas—contractors  
 Blacktop work; private driveways and private parking areas—contractors  
 Concrete finishers—contractors  
 Concrete work: private driveways, sidewalks, and parking areas—contractors  
 Culvert construction—contractors  
 Curb construction—contractors  
 Foundations, building of: poured concrete—contractors  
 Grouting work—contractors  
 Guniting work—contractors  
 Parking lot construction—contractors  
 Patio construction, concrete—contractors  
 Sidewalk construction, except public—contractors

*m. Water well drilling contractors.* Establishments primarily engaged in drilling, tapping, and capping of water wells and geothermal drilling. The water well drilling work performed includes new work, additions, alterations, and maintenance and repairs.

Drilling water wells—contractors  
 Geothermal drilling—contractors  
 Servicing water wells—contractors  
 Well drilling, water: except oil or gas field water intake—contractors

*n. Other special trade contractors.*

(1) Structural steel erection contractors. Establishments primarily engaged in one or more of the following: (1) erecting metal, structural steel and similar products of prestressed or precast concrete to produce structural elements of building exterior, and elevator fronts; (2) setting rods, bars, rebar, mesh and cages to reinforce poured-in-place concrete; and (3) erecting cooling towers and metal storage tanks. The structural steel erection work performed includes new work, additions, alterations, reconstruction, and maintenance and repairs.

Building front installations, metal—contractors  
 Concrete products, structural precast or prestressed: placing of—contractors  
 Concrete reinforcement, placing of—contractors  
 Curtain wall installation—contractors  
 Elevator front installation, metal—contractors  
 Iron work, structural—contractors  
 Metal furring—contractors  
 Steel work, structural—contractors  
 Storage tanks, metal; erection—contractors  
 Storefront installation, metal—contractors

(2) Glass and glazing contractors. Establishments primarily engaged in installing glass or tinting glass. The glass work performed includes new work, additions, alterations, and maintenance and repairs.

Glass installation, except automotive—contractors  
 Glass work, except automotive—contractors

Glazing work—contractors

Tinting glass—contractors

(3) Excavation contractors. Establishments primarily engaged in preparing land for building construction. The excavation work performed includes new work, additions, alterations, and repairs.

Excavation work—contractors

Foundation digging (excavation)—contractors

Grading: except for highways, streets and airport runways—contractors

(4) Wrecking and demolition contractors. Establishments primarily engaged in wrecking and demolition of buildings and other structures.

Concrete breaking for streets and highways—contractors

Demolition of buildings or other structures, except marine—contractors

Dismantling steel oil tanks, except oil field work—contractors

Underground tank removal—contractors

Wrecking of building or other structures, except marine—contractors

(5) Building equipment and other machinery installation contractors. Establishments primarily engaged in one or more of the following: (1) the installation or dismantling of building equipment, machinery or other industrial equipment; (2) machine rigging; and (3) millwrighting. The building equipment and other machinery installation work performed includes new work, additions, alterations, and maintenance and repairs.

Conveyor system installation—contractors

Dismantling of machinery and other industrial equipment—contractors

Dumbwaiter installation—contractors

Dust collecting equipment installation—contractors

Elevator installation, conversion, and repair—contractors

Incinerator installation, small—contractors

Installation of machinery and other industrial equipment—contractors

Machine rigging—contractors

Millwrights

Pneumatic tube system installation—contractors

Power generating equipment installation—contractors

Revolving door installation—contractors

Vacuum cleaning systems, built-in—contractors

(6) All other special trade contractors. Establishments primarily engaged in specialized construction work. The other specialized work performed includes new work, additions, alterations, and maintenance and repairs.

Antenna installation, except household type—contractors

Artificial turf installation—contractors

Awning installation—contractors

Bathtub refinishing—contractors

Boring for building construction—contractors

Bowling alley installation and service—contractors

Cable splicing service, nonelectrical—contractors

Caulking (construction)—contractors

Cleaning building exteriors—contractors

Cleaning new buildings after construction—contractors

Coating of concrete structures with plastic—contractors

Core drilling for building construction—contractors

Countertop installation—contractors

Dampproofing buildings—contractors

Dewatering—contractors

Diamond drilling for building construction—contractors

Epoxy application—contractors

Erection and dismantling of forms for poured concrete—contractors  
Fence construction—contractors  
Fire escape installation—contractors  
Fireproofing buildings—contractors  
Forms for poured concrete, erection and dismantling—contractors  
Gas leakage detection—contractors  
Gasoline pump installation—contractors  
Glazing of concrete surfaces—contractors  
Grave excavation—contractors  
House moving—contractors  
Insulation of pipes and boilers—contractors  
Lead burning—contractors  
Lightning conductor erection—contractors  
Mobile home site setup and tie down—contractors  
Ornamental metal work—contractors  
Paint and wallpaper stripping—contractors  
Plastic wall tile installation—contractors  
Posthole digging—contractors  
Sandblasting of building exteriors—contractors  
Scaffolding construction—contractors  
Service and repair of broadcasting stations—contractors  
Service station equipment installation, maintenance and repair—contractors  
Shoring and underpinning work—contractors  
Spectator seating installation—contractors  
Steam cleaning of building exteriors—contractors  
Steeplejacks  
Swimming pool construction—contractors  
Television and radio stations, service and repair of—contractors  
Test boring for construction—contractors  
Tile installation, wall: plastics—contractors  
Waterproofing—contractors  
Weatherstripping—contractors  
Welding contractors, operating at site of construction  
Window shade installation—contractors

**23.82(3)** *The assignment of standard industrial codes.* Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should be determined by its relative share of value added at the establishment. Since this is not possible for all sectors of the economy, the following should be used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on measures of output will not accurately reflect the importance of the diversified activities. In these cases, employment or payroll should be used in lieu of the normal basis for determining the primary activity and subsequent code assignment of the establishment.

This rule is intended to conform to federal changes in the North American Industry Classification System and implements Iowa Code sections 96.7(2), 96.7(3), 96.7(4) and 96.11(1).  
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◊ Two or more ARCs

<sup>1</sup> Agency rescinded prior to effective date

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-service members 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.

**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)** Reserved.

**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)** Reserved.

**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 to those individuals who worked full- or part-time and will again work full- or part-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 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; ARC 4832C, IAB 12/18/19, effective 1/22/20; ARC 6893C, IAB 2/22/23, effective 3/29/23]

**871—24.3(96) Social security number needed for filing.** A claim will not become valid until the identity of the claimant has been verified by the department.

**24.3(1)** Upon the filing of a claim, notification shall be provided to the claimant if the claimant's identity was not verified.

**24.3(2)** If the agency is unable to verify the claimant's identity in the claim application, the claimant must provide approved documents. Approved documents must include at least one document containing

a social security number. The department shall determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

**24.3(3)** The claimant's identity will not be considered verified until approved documents have been provided. The claim shall remain locked from issuance of benefits until the claimant has provided the approved documents to verify identity.

**24.3(4)** After filing a claim application, the claimant shall not be eligible for benefits for any week until approved documents are provided to verify identity.

**24.3(5)** Approved documents must be provided or postmarked by Saturday at 11:59 p.m. of the week in which the approved documentation is due, and the claim shall be unlocked for all weeks following the most recent effective date of the claim application.

**24.3(6)** If required documents are provided in any subsequent weeks following the due date, the claimant shall be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

This rule is intended to implement Iowa Code section 96.6.  
[ARC 4725C, IAB 10/23/19, effective 11/27/19]

#### **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.

#### **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.* and *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.

**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; ARC 4833C, IAB 12/18/19, effective 1/22/20]

**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) Reserved.

**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 response, 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, the unemployment insurance representative shall determine the days 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). If the claimant received vacation pay under rule 871—24.16(96), the maximum number of days the vacation pay shall be applied is five workdays following the separation date. The first day the vacation pay can be applied is the first workday after the separation. 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 if the base period employer has made 100 percent of the contributions to the plan 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; ARC 4832C, IAB 12/18/19, effective 1/22/20; ARC 5037C, IAB 5/6/20, effective 6/10/20]

**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)** Rescinded IAB 12/18/19, effective 1/22/20.

**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; ARC 4832C, IAB 12/18/19, effective 1/22/20]

**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 five workdays following the last date worked. The claimant shall also be instructed that vacation pay designated by the employer in excess of the vacation pay the claimant reported 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; ARC 4832C, IAB 12/18/19, effective 1/22/20; ARC 5037C, IAB 5/6/20, effective 6/10/20]

**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 lower multiple of one 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).

[ARC 4559C, IAB 7/17/19, effective 8/21/19]

**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 provide information to the department regarding matters which are awaiting decision to determine eligibility. A telephone fact-finding interview may be set up upon request of either interested party. The request must be received or postmarked within seven calendar days of the notice of claim being issued. 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; ARC 5037C, IAB 5/6/20, effective 6/10/20]

**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. Exceptions.*

(1) 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 a 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.

(2) The requirement for seeking work is waived for the first 16 weeks after the initial claim is filed if all of the following conditions apply:

1. The individual is attached to a regular job or industry.
2. The individual is a high-skilled worker. For purposes of this numbered paragraph, "high-skilled worker" means a worker whose job or position requires licensing, credentials, or specialized training.
3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.
4. The individual otherwise qualifies for unemployment insurance benefits.

(3) The requirement for seeking work is waived for the first eight weeks after the initial claim is filed. A claimant shall be required to complete one work search activity each week after the first eight weeks after the initial claim is filed if all of the following conditions apply:

1. The individual is attached to a regular job or industry.
2. The individual is a worker other than a high-skilled worker as defined in numbered paragraph 24.22(3) "c"(2)"2."
3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.
4. The individual otherwise qualifies for unemployment insurance benefits.

(4) If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request a one-time extension of the waiver or alteration for up to two weeks from the department. For the purposes of this subparagraph, "short-term circumstances" means a temporary, unexpected condition that delays the anticipated start of the employer's normal work season.

*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; ARC 6487C, IAB 9/7/22, effective 10/12/22]

**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)** Reserved.

**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)** Reserved.

**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)** Reserved.

**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)** Reserved.

**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)** Reserved.

**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 26 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.

[ARC 6893C, IAB 2/22/23, effective 3/29/23]

**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.* For the purposes of this rule, "misconduct" is defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Willful and deliberate falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer's or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

*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; ARC 6893C, IAB 2/22/23, effective 3/29/23]

### **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) Reserved.

*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-service members 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-service member 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 60 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.

[ARC 6893C, IAB 2/22/23, effective 3/29/23]

**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-service Member'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-service Member'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)** Reserved.

**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 subparagraph 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 subparagraph 24.22(2) “i”(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subparagraph 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. The reduction in work hours for employees is based on a work week comprised of 40 or fewer hours, and not a work week exceeding 40 hours. 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 shall be no shorter than 4 weeks and no longer than 52 weeks in duration. Any requests for subsequent plans will be reviewed by the department.

**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. Reasons for denial or revocation of a plan include, but are not limited to:

- a. The provision of false or misleading information to the department;
- b. Unequal treatment of any employee in the affected unit;
- c. A reduction in fringe benefits resulting from participation in the program;
- d. An employer, while participating in the shared work unemployment compensation program, laying off any employee, whether the employee is employed within an affected unit or not; or
- e. 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.

**24.58(7)** *Employer requirements.*

*a.* For each week that a voluntary shared work employer has an active plan, the voluntary shared work employer shall submit a certification of hours worked by employees covered by an employer's approved work share plan in the form or manner directed by the department for each employee covered by the employer's approved work share plan. This includes a part-time employee provided that the employee meets all other requirements.

*b.* The first employer weekly certification shall be due no later than the Monday following the effective date of the employer's approved work share plan. All subsequent weekly employer certifications shall be due no later than Monday (close of business) immediately following the benefit week. If the employer fails to submit the weekly certification by Monday immediately following the benefit week, the department will have good cause to terminate the employer's work share 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; ARC 4832C, IAB 12/18/19, effective 1/22/20; ARC 6893C, IAB 2/22/23, effective 3/29/23]

**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).  
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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 26  
CONTESTED CASE PROCEEDINGS

[Prior to 9/24/86, Employment Security[370] Ch 6]

[Former 345—6.5(96) and 6.8(96) transferred to 345—9.2(17A,96) and 9.1(17A,96) respectively, IAC 6/10/92]

[Prior to 3/12/97, Job Service Division [345] Ch 6]

**871—26.1(17A,96) Applicability.** The rules in this chapter govern the procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

**871—26.2(17A,96) Definitions.** Terms defined in the Iowa employment security law and the Iowa administrative procedure Act and which are used in these rules shall have the same meaning as provided by such laws. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“*Contested case*” means a proceeding defined in Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case in Iowa Code section 17A.10A. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.17(5), a final decision of the employment appeal board of the department of inspections and appeals shall constitute final agency action. A presiding officer’s decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections and appeals or if the appeal is made directly to the district court in lieu of filing an appeal with the employment appeal board of the department of inspections and appeals.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means an administrative law judge employed by the department of workforce development.

[ARC 6893C, IAB 2/22/23, effective 3/29/23]

**871—26.3(17A,96) Time requirements.**

**26.3(1)** Time shall be computed as provided in Iowa Code section 4.1(34).

**26.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute.

[ARC 3009C, IAB 3/29/17, effective 5/3/17]

**871—26.4(17A,96) Commencement of unemployment benefits contested case.**

**26.4(1)** An unemployment benefits contested case is commenced with the filing, by mail, facsimile, or email, online, or in person, of a written appeal by a party with the appeals bureau of the department. The appeal shall be addressed or delivered to: Appeals Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the Iowa workforce development website.

**26.4(2)** An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or email, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and
- c. The grounds upon which the appeal is based.

**26.4(3)** Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual’s eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

**26.4(4)** Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual’s

eligibility to receive benefits within 15 days from the mailing date of the quarterly billing of benefit charges.

**26.4(5)** Appeals transmitted by facsimile, by email, or online which are received by the appeals bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day. [ARC 1276C, IAB 1/8/14, effective 2/12/14; ARC 3343C, IAB 9/27/17, effective 11/1/17]

**871—26.5(17A,96) Commencement of employer liability contested case.**

**26.5(1)** An employer liability contested case is commenced with the filing of a written appeal with the tax bureau of the department by mail, facsimile, or email, online, or in person. The appeal shall be addressed or delivered to: Tax Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**26.5(2)** An appeal from a decision of the tax bureau of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers shall be filed, by mail, facsimile, or email, online, or in person, not later than 30 calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at the party's last-known address and shall set forth the following:

- a. The name, address, and Iowa employer account number of the employer;
- b. The name and title of the person filing the appeal;
- c. A reference to the decision from which the appeal is taken; and
- d. The grounds upon which the appeal is based.

**26.5(3)** Appeals transmitted by facsimile, by email, or online which are received by the tax bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day. [ARC 1276C, IAB 1/8/14, effective 2/12/14; ARC 3343C, IAB 9/27/17, effective 11/1/17]

**871—26.6(17A,96) Notice of hearing.**

**26.6(1)** A notice of hearing shall be sent by first-class mail or via email to all parties at their last-known address at least ten calendar days in advance of the hearing date and shall include:

- a. The date, time and place of an in-person hearing, or the date and time of a telephone hearing, including instructions for contacting the appeals bureau in advance of the hearing to provide the names and telephone numbers of all participants and witnesses; and
- b. The nature of the hearing, including the legal authority and jurisdiction under which the hearing is held; and
- c. A statement of the issues and the applicable sections of the Iowa Code or Iowa Administrative Code; and
- d. A description of the administrative law judge who will serve as presiding officer.

**26.6(2)** The ten-day notice of hearing may be waived upon the agreement of the parties.

**26.6(3)** An in-person hearing shall be scheduled in the following workforce development centers: Burlington, Carroll, Cedar Rapids, Creston, Council Bluffs, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Mason City, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo.

**26.6(4)** A hearing shall be scheduled promptly and shall be conducted by telephone unless a party requests that it be held in person. A request for an in-person hearing may be denied if factors such as the distance between the parties, the number of parties or the health of any party make it impractical or impossible to conduct a fair hearing in person. An in-person hearing may be scheduled at the discretion of the presiding officer to whom the contested case is assigned or by the manager or chief administrative law judge of the appeals bureau. The party requesting an in-person hearing will ordinarily be required to travel the greater distance if all parties are not located near the same hearing site. As a matter of discretion, the appeals bureau may schedule an in-person hearing at a regular hearing site approximately equidistant from the parties. In the discretion of the presiding officer to whom the contested case is assigned, or the manager or chief administrative law judge of the appeals bureau, witnesses or representatives may be allowed to participate via telephone in an in-person hearing.

**26.6(5)** Whenever it appears that other parties should be joined to dispose of all issues in a contested case, the presiding officer shall so order and shall grant such continuance and hold such additional proceedings, upon notice to all parties, as may be necessary.

**26.6(6)** Any number of appeals involving similar issues of law or fact may be consolidated for hearing so long as no substantial rights of any party would be prejudiced by so doing.

**26.6(7)** Any party may appear in any proceeding. Any partnership, corporation, or association may be represented by any of its members, officers, or a duly authorized representative. Any party may appear by, or be represented by, an attorney-at-law or a duly authorized representative of an interested party.

**26.6(8)** Where a party not attending the hearing will be represented by another person, such person shall submit written proof of such representation, signed by the party such person purports to represent, at least three days before the hearing to the presiding officer.

[ARC 1276C, IAB 1/8/14, effective 2/12/14; ARC 3009C, IAB 3/29/17, effective 5/3/17; ARC 3343C, IAB 9/27/17, effective 11/1/17]

#### **871—26.7(17A,96) Recusal.**

**26.7(1)** A presiding officer shall withdraw from participation in the hearing or the making of any decision in a contested case if:

*a.* The presiding officer has a personal bias or prejudice concerning a party or a representative of a party;

*b.* The presiding officer has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying the case, or another pending factually related case or pending factually related controversy that may culminate in a contested case involving the same parties;

*c.* The presiding officer is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying the contested case, or a pending factually related contested case or controversy involving the same parties;

*d.* The presiding officer has acted as counsel to any person who is a private party to that proceeding within the past two years;

*e.* The presiding officer has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

*f.* The presiding officer has a spouse or relative within the third degree of relationship that: is a party to the case, or an officer, director or trustee of a party; is a lawyer in the case; is known to have an interest that could be substantially affected by the outcome of the case; or is likely to be a material witness in the case; or

*g.* The presiding officer has any other legally sufficient cause to withdraw from participation in the hearing and decision making in that case.

**26.7(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 26.10(7).

**26.7(3)** If the presiding officer knows of information which might reasonably be deemed a basis for recusal but decides recusal is unnecessary, the presiding officer shall submit the relevant information for the record along with a statement of the reasons for declining recusal.

**26.7(4)** If a party asserts disqualification of the presiding officer for any appropriate ground, the party shall file an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, as soon as the reason alleged in the affidavit becomes known to the party. If, during the course of a hearing, a party first becomes aware of evidence of bias or other ground for recusal, the party may move for recusal but must establish the grounds by the introduction of evidence into the record. If the presiding officer determines that recusal is appropriate, the presiding officer shall withdraw. If the

presiding officer decides that recusal is not required, the presiding officer shall enter an order to that effect. This order may be the basis of the aggrieved party's appeal from the decision in the case.

**871—26.8(17A,96) Withdrawals, dismissals, and postponements.**

**26.8(1)** An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of an administrative law judge or the manager or chief administrative law judge of the appeals bureau. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

**26.8(2)** A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

**26.8(3)** If, for good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing.

"Good cause" for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include, but are not limited to, death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable. Examples of circumstances that do not constitute good cause include, but are not limited to, a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

**26.8(4)** A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, *ex parte*, additional information regarding the request for reopening. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

**26.8(5)** If good cause for postponement or reopening has not been shown, the presiding officer may make a decision based upon whatever evidence is properly in the record or—in appropriate cases—may enter default as set forth in rule 871—26.14(17A,96).

[ARC 3009C, IAB 3/29/17, effective 5/3/17; ARC 5727C, IAB 6/30/21, effective 8/4/21]

**871—26.9(17A,96) Discovery.**

**26.9(1)** Discovery procedures applicable to civil actions are available to all parties in interest in contested cases.

**26.9(2)** Unless otherwise limited by a protective order, discovery is not limited. Upon application by any adversely affected party or upon the presiding officer's own motion, the presiding officer may limit discovery in the following situations:

- a. The discovery sought is unduly repetitious, or the information sought can be obtained by another method that is more convenient, less burdensome or less expensive; or
- b. The party seeking discovery has had prior ample opportunity to obtain the information; or
- c. The discovery is unduly burdensome or expensive when viewed in the context of the factual issues to be resolved, the limited resources of the parties, and the parties' interest in prompt resolution of the contested case.

**26.9(3)** A party may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the contested case, including the existence, description, nature, custody, condition and location of any tangible items and the identity and location of persons having knowledge of discoverable

matters. Information may be discovered, even if inadmissible itself, if it appears reasonably calculated to lead to the discovery of admissible evidence. The names of a party's witnesses, their expected testimony, and exhibits to be offered into evidence may be obtained by discovery.

**26.9(4)** A party who responded to a request for discovery with a response which was complete and accurate when made need not supplement the response to include information obtained later. However, a party must promptly supplement its response to requests for the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called to testify at the hearing, and the party must produce copies of exhibits expected to be offered into evidence at the hearing as such decisions are made. A party must also promptly amend any response if it obtains information showing that its prior response was incorrect when made or, though correct when made, is no longer correct.

**26.9(5)** No motion relating to discovery, including motions for imposition of sanctions, will be considered unless the moving party states that it made a good-faith but unsuccessful effort to resolve the issues raised in the motion with the opposing party without intervention by the presiding officer.

**26.9(6)** Upon motion by a party or the person from whom discovery is sought or by any person who may be adversely affected thereby, and for good cause shown, the presiding officer before whom the contested case is pending may make any order which justice requires to protect a party or person from oppression or undue burden or expense. Such order may deny the request for discovery or limit terms, conditions, manner and scope thereof.

**26.9(7)** A party may, in accordance with subrule 26.9(5), ask the presiding officer for an order compelling discovery if the other party fails within a reasonable time to make a complete, good-faith response. After notice to both parties and hearing on the motion, the presiding officer shall enter an order which denies or compels discovery. This order may be combined with a protective order pursuant to subrule 26.9(6).

**26.9(8)** Upon written request by any party or upon the presiding officer's own motion, the presiding officer may impose sanctions for the failure to respond to discovery requests; however, sanctions shall not be imposed without prior specific notice from the presiding officer of the contemplated sanction, opportunity to be heard and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

- a. Postponing and rescheduling the hearing if requested by the party demonstrably prejudiced by the failure;
- b. Excluding testimony of witnesses not identified in response to a specific request for such information;
- c. Excluding from the record those exhibits not identified in response to a specific request for such information;
- d. Excluding the party from participating in the contested case proceedings;
- e. Dismissing the party's appeal.

**26.9(9)** Requests for discovery shall be served on the opposing party by ordinary mail, fax or email. Responses must be served on the party requesting the discovery within ten days after the discovery request is sent unless the presiding officer grants an extension of time to comply. Requests for discovery must be made at least ten days before a scheduled contested case hearing. A party's inattention to preparation is not good cause to postpone the hearing.

[ARC 1276C, IAB 1/8/14, effective 2/12/14; ARC 3266C, IAB 8/16/17, effective 9/20/17]

#### **871—26.10(17A,96) Ex parte communications.**

**26.10(1)** An ex parte communication is an oral or written communication relating directly to the facts or legal questions at issue in a contested case proceeding which is made by a party to the presiding officer to whom the case has been assigned without the knowledge or outside the presence of the other parties and with the object of affecting the outcome of the case.

**26.10(2)** Ex parte communication does not include:

- a. Statements given by the parties to representatives of the department for use in making the initial determination;

- b. Statements contained in a party's appeal from the initial determination;
- c. Statements relating only to procedural or scheduling matters, such as requests for discovery, subpoenas, postponements or withdrawals of appeals;
- d. Requests for clarification of a legal issue involved in a contested case, but only to the extent of requesting information on the applicable law sections and not as to matters of fact.

**26.10(3)** Unless required for the disposition of ex parte matters specifically authorized by statute, no party or its representative shall communicate directly or indirectly with the presiding officer to whom a contested case is assigned, nor shall the presiding officer communicate directly or indirectly with a party or its representative concerning any issue of fact or law in a contested case unless:

a. Each party or its representative is given written notification of the communication. Such notification shall contain a summary of the communication, if oral, or a copy of the communication, if written, as well as the time, place and means of the communication.

b. After notification, all parties have the right, upon written demand, to respond to the ex parte communication, including the right to be present and heard if an oral communication has not been completed. If the communication is written, or if oral and completed, all other parties have the right, upon written demand, to a special hearing to respond to the ex parte communication.

c. Whether or not any party requests the opportunity to respond to an ex parte communication made in violation of Iowa Code section 17A.17(2) as amended by 1998 Iowa Acts, chapter 1202, section 19, the presiding officer shall include such communication in the official record of the contested case.

**26.10(4)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**26.10(5)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible.

**26.10(6)** A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial as to require the presiding officer's recusal. If the presiding officer determines that recusal is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that recusal is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**26.10(7)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual material has already been or shortly will be disclosed. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or shortly will be provided to the parties.

**26.10(8)** The presiding officer may impose appropriate sanctions for violations of this rule, including dismissal of an appellant's contested case, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the manager or chief administrative law judge of the appeals bureau for possible sanctions.

[ARC 3009C, IAB 3/29/17, effective 5/3/17]

#### **871—26.11(17A,96) Motions.**

**26.11(1)** No technical form for motions is required. Nevertheless, prehearing motions must be in writing, state the grounds for relief and state the relief sought.

**26.11(2)** Any party may file a written response to a motion within five business days after the motion is served, unless the time period is extended or shortened by the presiding officer, who may consider failure to respond within the required time period in the ruling on a motion.

**26.11(3)** The presiding officer may schedule oral arguments on any motion.

**26.11(4)** Motions pertaining to the hearing must be filed and served at least five days prior to the date of the hearing unless there is good cause for permitting later action or the time is lengthened or shortened by the presiding officer.

**871—26.12(17A,96) Prehearing conference.**

**26.12(1)** Any party may request a prehearing conference. A request, or an order for a prehearing conference on the presiding officer's own motion, shall be filed not less than five days prior to the hearing. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variance from this rule.

**26.12(2)** Each party shall bring to the prehearing conference:

*a.* A final list of witnesses who the party anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

*b.* A final list of exhibits which the party anticipates will be introduced at the hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing within time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**26.12(3)** In addition to the requirements of subrule 26.12(2), the parties at a prehearing conference may: enter into stipulations of fact; enter into stipulations on the admissibility of exhibits; identify matters the parties intend to request be officially noticed; and consider any additional matters which will expedite the hearing.

**26.12(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**871—26.13(17A,96) Subpoenas for witnesses and documents.**

**26.13(1)** It is the responsibility of the parties to request the attendance of witnesses the parties believe have knowledge of the facts in issue in the contested case.

**26.13(2)** Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

**26.13(3)** The written request shall include:

*a.* The full name and mailing address or email address of the person to be served; and

*b.* A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses.

**26.13(4)** Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena duces tecum for documents or other items believed to be relevant to the facts in issue in the contested case. The request must specifically describe the items to be provided pursuant to the subpoena duces tecum.

**26.13(5)** Documents or other items subpoenaed for hearings shall be mailed, faxed, or emailed to the appeals bureau and to the other parties to the proceeding prior to the hearing date.

**26.13(6)** If the presiding officer deems it appropriate, the entity or person to whom a subpoena is directed shall be notified and given the opportunity to object to its issuance.

*a.* If an objection to the issuance of the subpoena is raised, the presiding officer, as a matter of discretion, may hear and rule on the objection prior to commencing the evidentiary hearing or may postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

*b.* The presiding officer shall issue the subpoena if it is established to the presiding officer's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

**26.13(7)** If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), petition the district court for review of the action before proceeding further. The aggrieved party must promptly notify the presiding officer that a petition for judicial review of the subpoena order will be filed immediately so the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals or directly to the district court.

**26.13(8)** If any entity or person to whom a subpoena is directed refuses to honor the subpoena, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), apply to the appropriate district court for an order to compel the entity or person to obey the subpoena.

[ARC 3530C, IAB 12/20/17, effective 1/24/18; ARC 6893C, IAB 2/22/23, effective 3/29/23]

### **871—26.14(17A,96) Conduct of hearings.**

**26.14(1)** Each contested case hearing shall be heard and decided by a presiding officer who is an administrative law judge.

*a.* All contested case hearings except as provided in paragraphs “*b*” and “*c*” below shall be heard and decided by an administrative law judge employed by the department of workforce development. The qualifications for administrative law judges employed by the department of workforce development shall be the same as the qualifications for administrative law judges employed by the division of administrative hearings of the department of inspections and appeals.

*b.* Contested case hearings in which the department of workforce development is a party may be heard and decided by an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

*c.* The department of workforce development is a party to contested case hearings in which it is the employer. The department of workforce development is a party to contested case hearings involving issues of employer liability and employee/independent contractor status that arise from decisions issued by the tax bureau.

**26.14(2)** The presiding officer shall inquire fully into the factual matters at issue and shall receive in evidence the sworn testimony of witnesses and physical evidence which are material and relevant to such matters. Upon the presiding officer's own motion or upon the written application of any party, and for good cause shown, the presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the original contested case hearing.

**26.14(3)** The presiding officer shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

**26.14(4)** The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing. If, during the course of a hearing, it appears to the presiding officer that a section of the Iowa Code not set forth in the notice of hearing may affect the presiding officer's decision, the presiding officer shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the presiding officer shall postpone the hearing and cause new notices of hearing, containing all relevant issues and law sections, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

**26.14(5)** If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the presiding officer shall not take testimony or evidence on such issue but shall remand the issue to the appropriate section of the department for investigation and preliminary determination.

**26.14(6)** If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

*a.* If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

*b.* If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party.

**26.14(7)** If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

*a.* If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

*b.* If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party.

*c.* Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

**26.14(8)** The presiding officer shall record all communications with late parties. If the presiding officer does not reopen the record, the decision in the contested case shall state the presiding officer's reason for so doing.

**26.14(9)** Rescinded IAB 1/8/14, effective 2/12/14.

**26.14(10)** Whenever necessary, the presiding officer may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

*a.* If the primary issue is the claimant's ability to work, availability for work or work search, the department shall be named as respondent. The presiding officer may call department personnel having knowledge of the facts in controversy as witnesses.

*b.* If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

*c.* If the issue on appeal is the claimant's refusal of employment because of wages, the presiding officer may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The presiding officer may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

**26.14(11)** In the discretion of the presiding officer, witnesses may be excluded from the hearing room or telephone hearing until called to testify. The presiding officer shall admonish such witnesses

not to discuss the case among themselves until after the record has been closed. All witnesses shall be subject to examination by the presiding officer and by all parties.

**26.14(12)** The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

**26.14(13)** If the parties agree that no dispute of material facts exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant material evidence either by stipulation or otherwise as agreed by the parties, without the necessity of a formal evidentiary hearing.

[ARC 1277C, IAB 1/8/14, effective 2/12/14; ARC 3009C, IAB 3/29/17, effective 5/3/17; ARC 3343C, IAB 9/27/17, effective 11/1/17; ARC 5727C, IAB 6/30/21, effective 8/4/21]

#### **871—26.15(17A,96) Evidence.**

**26.15(1)** The presiding officer shall accept testimony and other evidence in accordance with Iowa Code section 17A.14.

**26.15(2)** The parties may stipulate as to all or a portion of the facts at issue in the contested case. The presiding officer may accept the stipulation as establishing the facts of the case or may take additional evidence.

**26.15(3)** Documentary evidence, whether or not verified, may be accepted by the presiding officer. Documentary evidence may be received in the form of copies or excerpts, if the originals are not readily available, provided the copies or excerpts are properly authenticated.

**26.15(4)** Objections to evidentiary offers shall be specific in nature and shall be noted in the record by the presiding officer. The presiding officer may rule immediately or defer ruling until the final decision.

**26.15(5)** Proposed exhibits must be sent to the appeals bureau and to the other party or parties to the proceeding before the hearing date by mail, fax, email or hand-delivery.

[ARC 3009C, IAB 3/29/17, effective 5/3/17; ARC 3266C, IAB 8/16/17, effective 9/20/17]

#### **871—26.16(17A,96) Recording costs.**

**26.16(1)** The presiding officer shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

**26.16(2)** The appeals bureau of the department of workforce development shall provide a copy of the whole or a part of the record at cost, unless there is further appeal in which event the record shall be provided to all parties at no cost.

[ARC 1276C, IAB 1/8/14, effective 2/12/14]

#### **871—26.17(17A,96) Decisions.**

**26.17(1)** The presiding officer shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

*a.* Set forth the issues, appeal rights, a concise history of the case, findings of essential facts, the reasons for the decision and the actual disposition of the case;

*b.* Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

*c.* Be sent by first-class mail or email to each of the parties in interest and their representatives.

**26.17(2)** In reaching a decision, the presiding officer shall apply relevant portions of the Iowa Code, decisions of the Supreme Court of Iowa, published decisions of the Iowa Court of Appeals, the Iowa Administrative Code and pertinent state and federal court decisions, statutes and regulations.

**26.17(3)** Copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

**26.17(4)** A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

**26.17(5)** A presiding officer's decision constitutes final agency action in an employer liability contested case.

*a.* Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

*b.* Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

**26.17(6)** In a claimant benefit contested case, final agency action shall be a presiding officer's decision, if no aggrieved party appealed the decision to the employment appeal board within 15 days, or the decision of the employment appeal board, if the aggrieved party appealed the decision to that tribunal.

*a.* Once final agency action has been established, any party who is aggrieved or adversely affected by the agency action has 30 days to file a petition for judicial review with the district court.

*b.* Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the date that the decision becomes final as a result of the failure to appeal the decision to the employment board. Applications for rehearing filed before this date will be forwarded to the employment appeal board as appeals to that tribunal. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

*c.* Any party in interest may file a petition for judicial review within 30 days after the denial of the request for rehearing.

[ARC 3009C, IAB 3/29/17, effective 5/3/17; ARC 6893C, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement Iowa Code chapters 17A and 96.

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- <sup>1</sup> At its meeting held August 3, 1999, the Administrative Rules Review Committee voted to impose a 70-day delay on amendments published in the July 28, 1999, Iowa Administrative Bulletin as **ARC 9215A**.