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

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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

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

### **Alcoholic Beverages Division[185]**

- Replace Analysis
- Replace Chapters 1 to 3
- Replace Chapter 5
- Replace Chapter 12
- Replace Chapter 19

### **Interior Design Examining Board[193G]**

- Replace Chapter 8

### **Historical Division[223]**

- Replace Analysis
- Replace Chapter 35
- Replace Chapter 42

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

- Replace Chapter 26

### **College Student Aid Commission[283]**

- Replace Chapter 36

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

- Replace Chapter 156

### **Environmental Protection Commission[567]**

- Replace Chapter 33
- Replace Chapter 64

### **Dental Board[650]**

- Replace Analysis
- Replace Chapters 10 to 15
- Replace Chapter 20
- Replace Chapter 22
- Replace Chapter 25
- Replace Chapter 29
- Replace Chapter 51

**Pharmacy Board[657]**

- Replace Chapter 7
- Replace Chapter 24
- Replace Chapter 37

**Revenue Department[701]**

- Replace Analysis
- Replace Chapters 6 to 8
- Replace Chapters 11 and 12
- Replace Chapter 38
- Replace Chapter 40
- Replace Chapters 42 and 43
- Replace Chapters 51 and 52
- Replace Chapter 54
- Replace Chapter 57
- Replace Chapter 59
- Replace Chapters 67 and 68
- Replace Chapter 70
- Replace Chapter 81
- Replace Chapters 84 to 86
- Replace Chapter 89
- Replace Chapters 103 and 104

**Secretary of State[721]**

- Replace Analysis
- Replace Chapters 21 and 22
- Replace Chapter 28

**Transportation Department[761]**

- Replace Chapter 615

**ALCOHOLIC BEVERAGES DIVISION[185]**

Created within the Department of Commerce by 1986 Iowa Acts, Senate File 2175.  
Formerly Beer and Liquor Control Department[150]

**CHAPTER 1  
ORGANIZATION AND OPERATION**

- 1.1(123,17A) Purpose
- 1.2(123,17A) Scope and rules
- 1.3(123,17A) Duties of the division
- 1.4(123,17A) Organization
- 1.5(123,17A) Central offices
- 1.6(123,17A) Matters applicable to all proceedings

**CHAPTER 2  
AGENCY PROCEDURE FOR RULE MAKING**

- 2.1(17A) Applicability
- 2.2(17A) Advice on possible rules before notice of proposed rule adoption
- 2.3(17A) Public rule-making docket
- 2.4(17A) Notice of proposed rule making
- 2.5(17A) Public participation
- 2.6(17A) Regulatory analysis
- 2.7(17A,25B) Fiscal impact statement
- 2.8(17A) Time and manner of rule adoption
- 2.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 2.10(17A) Exemptions from public rule-making procedures
- 2.11(17A) Concise statement of reasons
- 2.12(17A) Contents, style, and form of rule
- 2.13(17A) Agency rule-making record
- 2.14(17A) Filing of rules
- 2.15(17A) Effectiveness of rules prior to publication
- 2.16(17A) General statements of policy
- 2.17(17A) Review by agency of rules

**CHAPTER 3  
DECLARATORY ORDERS**

- 3.1(17A) Petition for declaratory order
- 3.2(17A) Notice of petition
- 3.3(17A) Intervention
- 3.4(17A) Briefs
- 3.5(17A) Inquiries
- 3.6(17A) Service and filing of petitions and other papers
- 3.7(17A) Consideration
- 3.8(17A) Action on petition
- 3.9(17A) Refusal to issue order
- 3.10(17A) Contents of declaratory order—effective date
- 3.11(17A) Copies of orders
- 3.12(17A) Effect of a declaratory order

**CHAPTER 4  
LIQUOR LICENSES—BEER PERMITS—WINE PERMITS**

- 4.1(123) Definitions
- 4.2(123) General requirements

4.3(123)	Local ordinances permitted
4.4(123)	Licensed premises
4.5(123)	Mixed drinks or cocktails not for immediate consumption
4.6	Reserved
4.7(123)	Improper conduct
4.8(123)	Violation by agent, servant or employee
4.9(123)	Gambling evidence
4.10 and 4.11	Reserved
4.12(123)	Display of license, permit, or signs
4.13(123)	Outdoor service
4.14(123)	Revocation or suspension by local authority
4.15(123)	Suspension of liquor control license, wine permit, or beer permit
4.16(123)	Cancellation of beer permits—refunds
4.17(123)	Prohibited storage of alcoholic beverages and wine
4.18(123)	Transfer of license or permit to another location
4.19(123)	Execution and levy on alcoholic liquor, wine, and beer
4.20(123)	Liquor store checks accepted
4.21(123)	Where retailers must purchase wine
4.22(123)	Liquor on licensed premises
4.23(123)	Liquor on unlicensed places
4.24(123)	Alcoholic liquor and wine on beer permit premises
4.25(123)	Age requirements
4.26(123)	Timely filed status
4.27(123)	Effect of suspension
4.28(123)	Use of establishment during hours alcoholic liquor, wine, and beer cannot be consumed
4.29	Reserved
4.30(123)	Persons producing fuel alcohol
4.31(123)	Storage of beer
4.32(123)	Delivery of alcoholic liquor
4.33(123)	Delivery of beer and wine
4.34(123)	Determination of population
4.35(123)	Minors in licensed establishments
4.36(123)	Sale of alcoholic liquor and wine stock when licensee or permittee sells business
4.37(123)	Business as usual on election days
4.38(123)	Sunday sale of wine
4.39	Reserved
4.40(123)	Warehousing of beer and wine
4.41(123)	Vending machines to dispense alcoholic beverages prohibited

## CHAPTER 5

### LICENSE AND PERMIT DIVISION

5.1(123)	Manufacture and sale of native wine
5.2	Reserved
5.3(123)	Licensed manufacturers and wholesalers
5.4(123)	Investigation before issuing license or permit
5.5	Reserved
5.6(123)	Living quarters permit
5.7(123)	Change of ownership of a licensed premises, new license or permit required
5.8(123)	Dramshop liability insurance requirements
5.9(123)	Surety bond requirements

## CHAPTER 6

Reserved

## CHAPTER 7

REPRESENTATIVES OF DISTILLERS, RECTIFIERS,  
MANUFACTURERS, BREWERS AND VINTNERS

- 7.1(123) Alcoholic liquor sales to the division—registration of agents
- 7.2(123) Salespersons—prohibited practices—penalties
- 7.3(123) Purchases
- 7.4(123) Infraction of rules

## CHAPTER 8

## TRANSPORTATION AND WAREHOUSE

- 8.1(123) Transportation of alcoholic liquor
- 8.2(123) Rules and regulations as between shippers and this division

## CHAPTER 9

Reserved

## CHAPTER 10

## CONTESTED CASES

- 10.1(17A) Scope and applicability
- 10.2(17A) Definitions
- 10.3(17A) Time requirements
- 10.4(123,17A) Statute of limitations
- 10.5(17A) Requests for contested case proceeding
- 10.6(17A) Notice of hearing
- 10.7(17A) Presiding officer
- 10.8(17A) Waiver of procedures
- 10.9(17A) Telephone proceedings
- 10.10(17A) Disqualification
- 10.11(17A) Consolidation—severance
- 10.12(17A) Pleadings
- 10.13(17A) Service and filing of pleadings and other papers
- 10.14(17A) Discovery
- 10.15(17A) Subpoenas
- 10.16(17A) Motions
- 10.17(17A) Continuances
- 10.18(17A) Withdrawals
- 10.19(17A) Intervention
- 10.20(17A) Hearing procedures
- 10.21(17A) Evidence
- 10.22(17A) Default
- 10.23(17A) Ex parte communication
- 10.24(17A) Recording costs
- 10.25(17A) Interlocutory appeals
- 10.26(17A) Final decision
- 10.27(17A) Appeals and review
- 10.28(17A) Applications for rehearing
- 10.29(17A) Stays of agency actions
- 10.30(17A) No factual dispute contested cases
- 10.31(17A) Emergency adjudicative proceedings

## CHAPTER 11

Reserved

## CHAPTER 12

## FORMS

12.1(123,17A) Purpose and scope

12.2(123,17A) Specific forms

## CHAPTER 13

Reserved

## CHAPTER 14

## PRIVATE WINE SALES

14.1(123) Wine definition

14.2(123) Bottle label requirements and registration

14.3 Reserved

14.4(123) Price postings by all holders of vintner's certificates of compliance

14.5(123) Price postings

14.6 Reserved

14.7(123) Supplier discrimination

## CHAPTER 15

Reserved

## CHAPTER 16

## TRADE PRACTICES

16.1(123) Definitions

16.2(123) Interest in a retail establishment

16.3(123) Product displays

16.4(123) Equipment, furnishings, fixtures

16.5(123) Advertising

16.6(123) Glassware

16.7(123) Extension of credit and prepaid accounts

16.8(123) Quota sales, tie-in sales

16.9(123) Combination packaging

16.10(123) Tastings, samplings and trade spending

16.11(123) Tapping accessories and coil cleaning service

16.12(123) Wine lists

16.13(123) Retailer advertising utensils, consumer souvenirs, wearing apparel

16.14(123) Coupons

16.15(123) Stocking and product rotation

16.16(123) Participation in seminars and retail association activities

16.17(123) Sponsorships and special events

16.18(123) Commercial bribery

16.19(123) Consignment sales

16.20(123) Record keeping

16.21(123) Free warehousing prohibited

16.22(123) Implied or express contracts prohibited

16.23(123) Discounts prohibited

16.24(123) Industry member, retailer—subject to penalties

16.25(123) Contested case—burden

CHAPTER 17  
CLASS "E" LIQUOR CONTROL LICENSES

17.1(123)	Definitions
17.2 and 17.3	Reserved
17.4(123)	Square footage to be stated under oath on application
17.5(123)	Authority to sell and to deliver to consumers and licensees
17.6	Reserved
17.7(123)	Advertising prohibitions
17.8(123)	Class "E" liquor license fees

CHAPTER 18  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

18.1(123,22)	Definitions
18.3(123,22)	Requests for access to records
18.9(123,22)	Disclosures without the consent of the subject
18.10(123,22)	Routine use
18.11(123,22)	Consensual disclosure of confidential records
18.12(123,22)	Release to subject
18.13(123,22)	Availability of records
18.14(123,22)	Personally identifiable information
18.15(123,22)	Other groups of records
18.16(123,22)	Other records
18.17(123,22)	Applicability

CHAPTER 19  
WAIVERS FROM RULES

19.1(17A)	Scope
19.2(17A)	Division discretion
19.3(17A)	Requester's responsibilities
19.4(17A)	Notice
19.5(17A)	Division's responsibilities
19.6(17A)	Public availability
19.7(17A)	Cancellation
19.8(17A)	Violations
19.9(17A)	Defense
19.10(17A)	Appeals



CHAPTER 1  
ORGANIZATION AND OPERATION  
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

**185—1.1(123,17A) Purpose.** This chapter describes the organization and operation of the alcoholic beverages division, including the offices where and the means by which any interested person may obtain information and make submittals or requests.

**185—1.2(123,17A) Scope and rules.** Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a certificate of compliance holder, manufacturer, micro-distiller, vintner, brewer, wholesaler, alcohol carrier, wine direct shipper, liquor control licensee or wine permittee or beer permittee, or an agent or employee thereof from any duty under the laws of this state.

This rule is intended to implement Iowa Code section 123.4.  
[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—1.3(123,17A) Duties of the division.** The alcoholic beverages division administers the laws of this state concerning alcoholic liquor, wine, and beer. The division is vested with the sole and exclusive control within the state of Iowa both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except wine and beer, except as otherwise provided by law.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—1.4(123,17A) Organization.**

**1.4(1) Commission.** The alcoholic beverages division consists of five commission members appointed by the governor and confirmed by the senate. The commission acts as a policy-making body and serves in an advisory capacity to the administrator. A quorum shall consist of at least three commission members.

**1.4(2) Administrator.** Subject to senate confirmation, the governor appoints an administrator who conducts the daily operations of the division as prescribed by Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.5, 123.6, 123.9, and 123.10.  
[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—1.5(123,17A) Central offices.** The central office is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; telephone (515)281-7400 or 1-866-469-2223. The central office is responsible for the operational support of the division and is the principal custodian of all divisional orders, statements of law or policy issued by the division, and other public documents on file with the division.

This rule is intended to implement Iowa Code section 123.4.  
[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—1.6(123,17A) Matters applicable to all proceedings.**

**1.6(1) Communications.** All communications to the division shall be addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, unless otherwise directed. Bids, complaints, pleadings, or other papers required to be filed with the division shall be filed in the office of the administrator within the time limit, if any, for such filing. Unless otherwise provided, all communications and documents are officially filed upon receipt at the office of the division.

**1.6(2) Office hours.** Office hours are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

**1.6(3) Public information.** Any interested person may examine all public records of the division including the decisions, orders, rules, opinions, and other statements of law or policy issued by the division in the discharge of its function. These documents may be examined in the offices of the division during regular business hours or on the Web site of the division located at [www.IowaABD.com](http://www.IowaABD.com).

Unless otherwise provided by law, all information contained therein shall be made available for public inspection.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 123.4, 123.5, 123.6, 123.9, 123.10, 123.21(10), and 17A.3.

[Filed 12/14/72]

[Filed 10/20/75, Notice 9/8/75—published 11/3/75, effective 12/9/75]

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[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]<sup>1</sup>

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

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[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

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[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

<sup>1</sup> Two ARCs. See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 2  
AGENCY PROCEDURE FOR RULE MAKING

[Ch 2, IAC 7/1/75 rescinded 3/7/79; see Ch 4]  
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

**185—2.1(17A) Applicability.** Except to the extent otherwise provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**185—2.3(17A) Public rule-making docket.**

**2.3(1) Docket maintained.** The agency shall maintain a current public rule-making docket.

**2.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the administrator for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

**2.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**185—2.4(17A) Notice of proposed rule making.**

**2.4(1) Contents.** At least 35 days before the adoption of a rule the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

**2.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 2.12(2) of this chapter.

**2.4(3) *Copies of notices.*** Persons desiring to receive copies of future Notices of Intended Action by subscription shall file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

### **185—2.5(17A) Public participation.**

**2.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, or the person designated in the Notice of Intended Action.

**2.5(2) *Oral proceedings.*** The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request shall also contain the following additional information:

- a. A request by one or more individual persons shall be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association shall be signed by an officer or designee of the association and shall contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
- c. A request by an agency or governmental subdivision shall be signed by an official having authority to act on behalf of the entity and shall contain the address and telephone number of the person signing that request.

**2.5(3) *Conduct of oral proceedings.***

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in

the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* The agency, a member of the agency, or another person designated by the agency who is familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) Procedure. At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Oral presentation. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) Discussion. To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) Authority of presiding officer. The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Submissions. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) Continuance. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Questions. Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) Rebuttal statements. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**2.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**2.5(5) Accessibility.** The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the alcoholic beverages division at (515)281-7400 or 1-866-469-2223 in advance to arrange access or other needed services.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

## **185—2.6(17A) Regulatory analysis.**

**2.6(1) Definition of small business.** A “small business” is defined in Iowa Code section 17A.4A(8) “a.”

**2.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**2.6(3) Time of mailing.** Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**2.6(4) Qualified requesters for regulatory analysis—economic impact.** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "a" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

**2.6(5) Qualified requesters for regulatory analysis—business impact.** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "b" after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**2.6(6) Time period for analysis.** Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**2.6(7) Contents of request.** A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

**2.6(8) Contents of concise summary.** The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4), (5), and (6).

**2.6(9) Publication of a concise summary.** The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(6).

**2.6(10) Regulatory analysis contents—rules review committee or rules coordinator.** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a" unless a written request expressly waives one or more of the items listed in the section.

**2.6(11) Regulatory analysis contents—substantial impact on small business.** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.7(17A,25B) Fiscal impact statement.**

**2.7(1) Fiscal impact statement.** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

**2.7(2) Corrected fiscal impact statement.** If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.8(17A) Time and manner of rule adoption.**

**2.8(1) Time of adoption.** The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**2.8(2) Consideration of public comment.** Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**2.8(3) Reliance on agency expertise.** Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**185—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**2.9(1) Rule different from proposed Notice of Intended Action.** The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**2.9(2) Determining fair warning.** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**2.9(3) Commencement of rule-making proceeding.** The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the

rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**2.9(4) *Concurrent rule-making proceedings.*** Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**185—2.10(17A) Exemptions from public rule-making procedures.**

**2.10(1) *Omission of notice and comment.*** To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**2.10(2) *Public proceedings on rules adopted without them.*** The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition shall be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule shall be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.11(17A) Concise statement of reasons.**

**2.11(1) *General.*** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and be delivered to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**2.11(2) *Contents.*** The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

**2.11(3) *Time of issuance.*** After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.12(17A) Contents, style, and form of rule.**

**2.12(1) *Contents.*** Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. The date the agency adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4A(1) "b" or the agency in its discretion decides to include such reasons;

- c. A reference to all rules repealed, amended, or suspended by the rule;

- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the agency in its discretion decides to include such reasons; and
- g. The effective date of the rule.

**2.12(2) *Incorporation by reference.*** The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

**2.12(3) *References to materials not published in full.*** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**2.12(4) *Style and form.*** In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

### **185—2.13(17A) Agency rule-making record.**

**2.13(1) *Requirement.*** The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

**2.13(2) *Contents.*** The agency rule-making record shall contain:

- a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

*b.* Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

*c.* All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the administrator, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

*f.* A copy of the rule and any concise statement of reasons prepared for that rule;

*g.* All petitions for amendment or repeal or suspension of the rule;

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(4) by the administrative rules review committee, the governor, or the attorney general;

*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6) "a," and any agency response to that objection;

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

**2.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

**2.13(4) *Maintenance of record.*** The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 2.13(2) "g," "h," "i," or "j."

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.14(17A) Filing of rules.** The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement shall be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.15(17A) Effectiveness of rules prior to publication.**

**2.15(1) *Grounds.*** The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**2.15(2) *Special notice.*** When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b"(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to

the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) "b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

**185—2.16(17A) General statements of policy.**

**2.16(1) *Compilation, indexing, public inspection.*** The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) "a," "c," "f," "g," "h," "k." Each addition to, change in, or deletion from the official compilation shall also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) "f," or otherwise authorized by law to be kept confidential, the compilation shall be made available for public inspection and copying.

**2.16(2) *Enforcement of requirements.*** A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—2.17(17A) Review by agency of rules.**

**2.17(1) *Written request for review.*** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**2.17(2) *Formal review process.*** In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code chapter 17A.

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<sup>1</sup> See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 3  
DECLARATORY ORDERS

[Ch 3, IAC 7/1/75 rescinded 3/7/79; see Ch 4]  
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

**185—3.1(17A) Petition for declaratory order.** Any person may file a petition with the alcoholic beverages division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division, at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. A petition is deemed filed when it is received by the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).		PETITION FOR DECLARATORY ORDER

The petition shall provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 185—3.7(17A).

The petition shall be dated and signed by the petitioner or the petitioner’s representative. It shall also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the alcoholic beverages division shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

**185—3.3(17A) Intervention.**

**3.3(1) Qualified persons.** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under rule 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

**3.3(2) Agency discretion.** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

**3.3(3) Filing of petition.** A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).		PETITION FOR INTERVENTION

The petition for intervention shall provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition shall be dated and signed by the intervenor or the intervenor's representative. It shall also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**185—3.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.6(17A) Service and filing of petitions and other papers.**

**3.6(1) When service required.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**3.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

**3.6(3) Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by contested case rule 185—10.13(17A).

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.7(17A) Consideration.** Upon request by petitioner, the alcoholic beverages division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

**185—3.8(17A) Action on petition.**

**3.8(1) Agency action.** Within the time allowed by Iowa Code section 17A.9(5) after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

**3.8(2) Issuance of order.** The date of issuance of an order or of a refusal to issue an order is as defined in contested case rule 185—10.2(17A).

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.9(17A) Refusal to issue order.**

**3.9(1) Refusal to issue order.** The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) “a” and “b” and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

**3.9(2) Grounds for refusal.** A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**3.9(3) Filing of new petition.** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—3.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**185—3.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 2/16/79, Notice 12/27/79—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

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[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]<sup>1</sup>

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[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

<sup>1</sup> See Alcoholic Beverages Division, IAB 7/30/86

CHAPTER 5  
LICENSE AND PERMIT DIVISION  
[Ch 5, IAC 7/1/75 renumbered Ch 6, IAC 3/7/79]  
[Prior to 10/8/86, Beer and Liquor Control Department [150]]

**185—5.1(123) Manufacture and sale of native wine.** Manufacturers of native wine from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, may sell, keep or offer for sale and deliver their native wine subject to the following regulations and restrictions.

**5.1(1) *Manufacturer of native wine defined.*** A manufacturer of native wine is a person in Iowa who processes grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wine.

**5.1(2) *Residency requirements.*** A manufacturer of native wine who is a sole proprietor must be a resident of Iowa. At least one of the partners of a partnership which is a manufacturer of native wine must be a resident of Iowa. A corporation which is a manufacturer of native wine must be registered to do business in Iowa with the Iowa secretary of state's office in lieu of any other residency requirements.

**5.1(3) *Licenses required.***

*a. Class "A" native wine permit.* Before selling its wine to the division, Class "A" wine wholesalers, retail wine permittees, and liquor control licensees, a manufacturer of native wine shall apply for and shall obtain from the division one Class "A" native wine permit and a \$5,000 bond for its wineries and for its retail establishments. A Class "A" native wine permit obtained for a native winery and for retail establishments costs \$25 a year. A manufacturer of native wine may obtain an application for a Class "A" native wine permit from the division and may submit the completed application and the \$25 fee to the division without having to get the application approved by a local authority. Each Class "A" native wine permit is valid for one year from the effective date and must be renewed each year. A manufacturer of native wine must display the original or a copy of its Class "A" native wine permit in each of its native wineries and in each of its retail establishments. The \$25 fee paid for a Class "A" native winery is not refundable. A manufacturer of native wine must register its retail establishment on forms provided by the division. The division shall issue a manufacturer of native wine duplicate copies of its Class "A" native wine permit so that a copy of it can be posted in each winery and retail establishment.

*b. Vintner's certificate of compliance.* In order for a manufacturer of native wine to be able to sell its wine to the division, it must obtain an application for a vintner's certificate of compliance from the division and must obtain a vintner's certificate from the division at no expense in addition to obtaining from the division its one Class "A" native wine permit.

*c. Class "B" wine permit.* In order for a manufacturer of native wine to sell wine it did not manufacture, it must obtain a Class "B" wine permit and a \$1,000 bond for each native winery or retail establishment.

**5.1(4) *Exclusive operation of retail establishments.*** No person except a manufacturer of native wine can operate a Class "A" native wine retail establishment.

**5.1(5) *Distance a retail establishment must be from a native winery.*** A manufacturer of native wine cannot have a retail establishment within five miles of a native winery not operated by the manufacturer of native wine.

**5.1(6) *Sale of native wine only.*** A manufacturer of native wine may sell wine it did not manufacture only if it obtains an appropriate retail wine permit for each location.

**5.1(7) *Hours of sale.*** A manufacturer of native wine can sell its native wine in its native winery and in its retail establishments on Mondays through Saturdays between the hours of 9 a.m. and 10 p.m. and on Sundays between the hours of 10 a.m. and 12 midnight.

**5.1(8) *Premises, books of account and records available for inspection.*** A manufacturer of native wine shall cause the premises, books of account, and records to be accessible and available at all reasonable times for inspection by representatives of the division, the law enforcement division of the Iowa department of public safety, or members of local police authority.

**5.1(9) *Delivery of native wine.*** A manufacturer of native wine may ship its native wine in closed containers to individual purchasers inside and outside Iowa.

**5.1(10) *Reports required.***

*a. Monthly combined wine production and wine gallonage tax report.* A monthly report is required showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold, the amount of wine gallonage tax due, and any other information requested. Report forms shall be furnished by the division. A manufacturer of native wine shall submit a report along with any wine gallonage tax payment to the division's licensing division by the tenth of each month for the preceding month's business. Reports and wine gallonage tax payments postmarked by the tenth of each month for the preceding month shall be considered timely. This report must be mailed for each month even if no wine sales were made during the month.

*b. Annual report.* A manufacturer of native wine shall, in January of each year, deliver to the division a complete report, sworn to under oath by the owner, a partner or corporate officer, showing the number of gallons of wine produced by the winery in the preceding year. Report forms shall be furnished by the division.

**5.1(11) *Wine gallonage tax.*** A manufacturer of native wine must pay to the division a \$1.75 wine gallonage tax on its native wine it sells at wholesale: (1) to retail liquor licensees, (2) to retail beer permittees, (3) to retail wine permittees, and (4) to the division. A manufacturer of native wine does not pay the \$1.75 wine gallonage tax on its native wine if: (1) sells at retail in Iowa in its winery and in its retail establishments, (2) ships to individuals inside and outside Iowa, and (3) sells to other Class "A" wine permittees and to Class "F" beer permittees.

This rule is intended to implement Iowa Code sections 123.4, 123.56, and 123.183.

**185—5.2(123) Special permits issued.** Rescinded IAB 8/18/93, effective 7/29/93.

**185—5.3(123) Licensed manufacturers and wholesalers.**

**5.3(1) *License required.*** A separate manufacturer's or wholesaler's license shall be required for each place of business of the holder.

**5.3(2) *To whom liquor may be sold outside the state of Iowa.*** The holder of a manufacturer's or wholesaler's license shall not sell alcoholic liquor outside the state of Iowa, except to a purchaser having the legal right to buy and receive it from the seller at the place of sale and place of delivery, respectively.

**5.3(3) *Proof of right to purchase.*** Before making a sale to a purchaser other than the division, a licensed manufacturer or wholesaler shall require the purchaser to produce and exhibit for inspection proof of the right to purchase alcoholic liquor according to the laws of the purchaser's own state.

**5.3(4) *Registry number of license or permit to physician or pharmacist required.*** If the purchaser is a licensed physician or pharmacist or the holder of any other form of license or permit entitling the purchaser to purchase alcoholic liquor, the licensed manufacturer or wholesaler must make a record of the sale which shows the registry number of the license or permit, date thereof and where and to whom it was issued and the date of the sale, name and address of the purchaser and kind and quantity of alcoholic liquor sold.

**5.3(5) *Licensed manufacturer or wholesaler to maintain record.*** The licensed manufacturer or wholesaler shall maintain a record of all shipments of liquor received and an individual record of each and every sale made, which record shall disclose the name and address of the purchaser and the kind and quantity of alcoholic liquor sold to each purchaser. The licensed manufacturer or wholesaler shall obtain from the carrier a receipt for each shipment of alcoholic liquor to each purchaser and shall deliver the receipt or the duplicate original of the receipt to the division.

**5.3(6) *Records accessible and available for inspection.*** All records, books of account and premises of a licensed manufacturer or wholesaler shall be accessible and available at all reasonable times for inspection by representatives of the division.

This rule is intended to implement Iowa Code sections 123.4, 123.41 and 123.42.

**185—5.4(123) Investigation before issuing license or permit.** No manufacturer's or wholesaler's license, nor any special permit referred to in Iowa Code section 123.29, shall be issued until an investigation has been made which shows that the applicant is entitled to such license or permit under the laws of Iowa and the rules of the division.

This rule is intended to implement Iowa Code sections 123.4, 123.41 and 123.42.

**185—5.5(123) Eligibility for beer and wine wholesalers licenses.** Rescinded IAB 5/15/91, effective 6/19/91.

**185—5.6(123) Living quarters permit.** This permit may be issued by the administrator to a licensee/permittee after an application furnished by the division has been filed with and approved by the local approving authority. The local approving authority shall forward the application to the license division of the division for processing.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

**185—5.7(123) Change of ownership of a licensed premises, new license or permit required.**

**5.7(1)** A new license or permit and a new bond and a new dramshop policy must be obtained whenever one of the following occurs:

- a. When a business is sold or leased to another person.
- b. When a licensee or permittee changes to another form of business, such as: sole proprietorship to a corporation; a corporation to a sole proprietorship; a sole proprietorship to a partnership; a partnership to a sole proprietorship; a partnership to a corporation; or a corporation to a partnership.
- c. When a partner leaves a partnership or when a new partner is added to a partnership.
- d. When a corporation name is changed due to a merger or is voluntarily changed by its owners.
- e. Each time an entity obtains a seasonal license or permit.
- f. When a receiver takes over the operation of an establishment.

**5.7(2)** A new license or permit is not required:

- a. When only the trade name of the business is changed.
- b. When the stock of a corporation holding a license or permit is sold. A letter to the division listing the new owner or owners and the amount of stock held by each is required.
- c. When a name of a licensee or permittee is changed by marriage, divorce, or other legal proceeding. A letter requesting the name change is required.
- d. When a license or permit is transferred to another location within the jurisdiction of the local authority as allowed by rule 185—4.18(123).

This rule is intended to implement Iowa Code sections 123.4, 123.21(11), 123.31 and 123.56.

**185—5.8(123) Dramshop liability insurance requirements.** For the purpose of providing proof of financial responsibility, as required under the provisions of Iowa Code section 123.92, a liability insurance policy shall meet the following requirements.

**5.8(1) Current certificate required.** The dramshop liability certificate of insurance shall be issued by a company holding a current certificate of authority from the Iowa insurance commissioner authorizing the company to issue dramshop liability insurance in Iowa or issued under the authority and requirements of Iowa Code sections 515.120 and 515.122. The dramshop policy shall take effect the day the license or permit takes effect and shall continue until the expiration date of the license or permit. A new dramshop liability certificate of insurance shall be provided each time the division issues a new license. The dramshop liability certificate of insurance shall contain the following: the name of the insurance provider; the policy number; the name and address of the insured; the license or permit number of the insured, if applicable; and the policy effective dates. Upon request, an insurance company or an insured shall provide to the division a duplicate original of the policy and all pertinent endorsements.

**5.8(2) Minimum coverage required.** The dramshop liability insurance policy shall provide the following minimum liability coverage, exclusive in interests and cost of action, per occurrence:

- a. Fifty thousand dollars for bodily injury to or death of one person in each claim or occurrence.

b. One hundred thousand dollars for bodily injury to or death of two or more persons in each occurrence.

c. Twenty-five thousand dollars for loss of means of support of any one person in each occurrence.

d. Fifty thousand dollars for loss of means of support of two or more persons in each occurrence.

**5.8(3) Permitted policies.** All dramshop policies issued under this rule shall be occurrence-based policies, not claims-made-based policies.

a. *Claims-made-based policies.* Claims-made-based policies provide liability coverage only if a written claim is made during the policy period, or any applicable extended reporting period.

b. *Occurrence-based policies.* Occurrence-based policies provide liability coverage only for injuries or damages that occur during the policy period regardless of the number of written claims made.

**5.8(4) Cancellation.** An insurance company or an insured may cancel a liability policy by giving a minimum of 30 days' prior written notice to the division of the party's intent to cancel the liability policy. The 30-day period shall begin on the date that the division receives the notice of cancellation. The party seeking to cancel a liability policy shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, or other method deemed acceptable by the division, and shall mail a copy of the notice of cancellation to the licensee or permittee at that party's post office address. The notice of cancellation shall contain the following: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the liability policy is being canceled, and the liquor control license or permit number of the licensee or permittee to be affected by such cancellation.

**5.8(5) Civil tort liability.** Subject to the ordinary or customary exclusions usually found in a policy of dramshop liability insurance, the policy shall contain coverage to insure against civil tort liability of the insured, created under Iowa Code sections 123.92, 123.93 and 123.94, as those sections now exist or may hereafter be amended.

**5.8(6) Proof of financial responsibility.** A licensee or permittee shall be deemed to have furnished proof of financial responsibility as contemplated under the provisions of Iowa Code sections 123.92, 123.93, and 123.94 when the licensee or permittee has filed with the division at its offices in Ankeny, Iowa, a properly executed form as described by subrule 5.8(1), or by other method deemed acceptable by the division.

**5.8(7) Signature required.** Copies of the form described above shall not be deemed properly executed unless the authorized company representative executing the same shall first have filed with the division a sample of the representative's signature. Electronic and facsimile signatures will be acceptable.

**5.8(8) Single insurance policies for multiple establishments.** Any licensee that holds multiple licenses throughout the state may purchase a single dramshop insurance policy for all locations provided that:

a. The single dramshop insurance policy provides at least the minimum level of coverage required under this rule for each and every location covered by the policy.

b. All other provisions of this rule are met by the single dramshop insurance policy.

**5.8(9) Assault and battery policy requirement.** Any dramshop insurance policy issued under this rule shall not contain an exclusionary clause for assault and battery or intentional force with regard to:

a. Employees, agents or any person acting as an agent of the establishment.

b. All patrons or visitors to the establishment.

**5.8(10) Implementation dates.** During the 12-month period commencing on September 1, 2003, all licensees and permittees applying for or renewing a license or permit shall obtain a dramshop insurance policy that conforms to the provisions of rule 5.8(123).

This rule is intended to implement Iowa Code sections 123.92, 123.93 and 123.94.  
[ARC 0274C, IAB 8/8/12, effective 9/12/12]

**185—5.9(123) Surety bond requirements.** A \$5,000 penal bond must be filed with the division with each application for a Class "A" wine permit, Class "A" beer permit, special Class "A" beer permit and manufacturer's license. A \$5,000, \$10,000 or \$15,000 penal bond must be filed with the division

with each application for a Class “E” liquor control license. A Class “E” liquor control licensee may determine the amount of the bond to be posted with the division, and may increase or decrease the face amount of the bond in increments of \$5,000 on one occasion during the licensee’s first year of business. Thereafter, a licensee may increase or decrease the face amount of the bond in increments of \$5,000 only when the liquor control license is renewed. Each penal bond must meet the following requirements.

**5.9(1) Certificate of authority.** It must be issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

**5.9(2) Forfeiture of bond.** It must contain a provision for the principal and surety to consent to the forfeiture of principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision which requires forfeiture of the bond.

**5.9(3) Cancellation.** A surety company or a principal may cancel a bond by giving a minimum of 30 days’ written notice to this division of the party’s intent to cancel the bond. The 30-day period shall commence on the date that this division receives the notice of cancellation. The party seeking to cancel a bond shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, and further shall mail a copy of the notice of cancellation to the other party, at that party’s post office address. The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the bond is being canceled, and the license or permit number of the licensee or permittee to be affected by such cancellation.

The cancellation or notice thereof shall have no force or effect in the event that the principal’s license or permit has been revoked during the period of the bond or when an administrative hearing complaint has been filed, and charges are currently pending against the licensee or permittee which could result in revocation of the license or permit after an administrative hearing on the complaint.

**5.9(4) Proof of bond.** A licensee or permittee shall be deemed to have furnished a surety bond when the licensee or permittee has filed with the division at its offices in Ankeny, Iowa, a form described by 185—subrule 12.2(7).

**5.9(5) Alternate for surety bond.** Rescinded IAB 5/15/91, effective 6/19/91.

**5.9(6) Two bonds.** Rescinded IAB 5/15/91, effective 6/19/91.

**5.9(7) Class “E” bond.** Rescinded IAB 10/31/01, effective 12/5/01.

This rule is intended to implement Iowa Code sections 123.21, 123.30, 123.128 and 123.129.

**185—5.10(123) Combination wine licenses and permits.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.11(123) Fees and surcharge enacted by the legislature for combination wine licenses and permits.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.12(123) Distribution of fees and the surcharge enacted by the legislature for combination wine licenses and permits.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.13(123) Bonds for combination wine and beer permits.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.14(123) Effect on retail and wholesale bottled wine licenses and permits.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.15(123) Refunds for fees for wholesale and retail bottled wine licenses.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.16(123) Liquor license surcharge enacted by the legislature.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.17(123) Calculating liquor license cost with Sunday Sales Privilege and surcharge enacted by the legislature.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.18(123) Surcharge on seasonal licenses.** Rescinded IAB 5/19/99, effective 6/23/99.

**185—5.19(123) Surcharge refund.** Rescinded IAB 5/19/99, effective 6/23/99.

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[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]<sup>02</sup>

[Filed 7/1/86, Notice 5/21/86—published 7/30/86, effective 9/3/86]<sup>2</sup>

[Filed emergency 8/22/86—published 9/10/86, effective 9/30/86]<sup>2</sup>

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<sup>0</sup> Two or more ARCs

<sup>1</sup> Effective date of 5.1(2), 5.1(7) and 5.7(1) delayed 70 days by the Administrative Rules Review Committee on 6/11/85.

<sup>2</sup> See Alcoholic Beverages Division in IAB.

CHAPTER 12
FORMS

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—12.1(123,17A) Purpose and scope. These rules shall govern all forms prescribed by the alcoholic beverages commission for use in proceedings before the division. The division may allow different forms to be utilized in a specific case as necessary.

12.1(1) Forms compliance. All papers filed with the division shall substantially comply with the requirements set forth in this chapter.

12.1(2) General requirements. All papers, except exhibits, shall be cut or folded so as not to exceed 8 1/2 inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin.

This rule is intended to implement Iowa Code section 123.21.

185—12.2(123,17A) Specific forms.

12.2(1) Petition for rule making. Rescinded IAB 5/19/99, effective 6/23/99.

12.2(2) Statement of position. Rescinded IAB 5/19/99, effective 6/23/99.

12.2(3) Counterstatement of position. Rescinded IAB 5/19/99, effective 6/23/99.

12.2(4) Request for rule-making oral presentation. Rescinded IAB 5/19/99, effective 6/23/99.

12.2(5) Request for rule-making statement. Rescinded IAB 5/19/99, effective 6/23/99.

12.2(6) Petition for declaratory ruling. Rescinded IAB 5/19/99, effective 6/23/99.

12.2(7) Retail bond.

ALCOHOLIC BEVERAGES DIVISION
1918 S.E. Hulsizer, Ankeny, Iowa 50021

BOND FOR RETAIL: LIQUOR LICENSES, BEER PERMITS, OR WINE PERMITS

Bond No. \_\_\_\_\_

KNOW ALL BY THESE PRESENTS THAT \_\_\_\_\_

(Principal)

of, \_\_\_\_\_ County,

(City and/or County)

State of Iowa, as Principal and \_\_\_\_\_

(Surety)

of \_\_\_\_\_,

(City and State)

as Surety, are held firmly bound unto the State of Iowa in the penal sum of \$ \_\_\_\_\_ lawful money of the United States, for the payment of which, in Des Moines, Polk County, Iowa, we bind ourselves, our successors and our legal representatives jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, the Principal has made application for:

- checkbox Class \_\_\_ Liquor License; checkbox Class \_\_\_ Wine Permit;
checkbox Class \_\_\_ Beer Permit; checkbox Special Class C Liquor License (Beer and Wine only);

to be issued by the Alcoholic Beverages Division.

NOW THEREFORE, if the Principal shall pay the amount Principal owes the division for writing the division insufficient funds checks for alcoholic beverages and wine as allowed by Iowa Code section 123.24, and shall faithfully observe and obey all other provisions of Iowa Code chapter 123, any amendments thereto, and the division's administrative rules, then this obligation to be void, otherwise to be and remain in full force and effect.

THIS BOND shall be effective on \_\_\_\_\_, 20\_\_\_\_, and shall remain effective continuously without cumulative liability until canceled. This bond may be canceled by the principal or the surety by giving written notice to the other party and the Alcoholic Beverages Division at its office in Ankeny, Iowa, stating the date of cancellation, which in no event shall be less than thirty days after actual receipt of notice; however, no cancellation shall be effective as to forfeiture in the event proceedings for the revocation of the principal’s liquor control license or beer permit have been or are commenced prior to the effective date of cancellation.

The Alcoholic Beverages Division by acceptance of this replacement bond gives notice to the Surety canceling prior bond(s) No.(s) \_\_\_\_\_, termination to be effective as of the time this bond becomes effective.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Countersigned \_\_\_\_\_  
(Iowa Resident Agent)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
(Attorney-in-Fact)

**12.2(8) Bond for three wholesalers’ permits.**

ALCOHOLIC BEVERAGES DIVISION  
1918 S.E. Hulsizer, Ankeny, Iowa 50021  
Bond No. \_\_\_\_\_

The bond being issued is a:

- Class “A” beer permit (beer wholesale only)
- Class “A” wine permit (wine wholesale only)
- Class “F” beer permit (beer and wine wholesale)

KNOW ALL BY THESE PRESENTS THAT \_\_\_\_\_  
(Principal)

of, \_\_\_\_\_ County,  
(City and/or County)

State of Iowa, as Principal, and \_\_\_\_\_  
(Surety)

of \_\_\_\_\_,  
(City and State)

as Surety, are firmly bound unto the State of Iowa in the penal sum of:

FIVE THOUSAND AND NO/100 DOLLARS if issued for a CLASS “A” BEER PERMIT (beer wholesale only) or for a CLASS “A” WINE PERMIT (wine wholesale only)

OR

TEN THOUSAND AND NO/100 DOLLARS if issued for a CLASS “F” BEER PERMIT (beer and wine wholesale)

lawful money of the United States, for the payment of which we bind ourselves, our successors and our legal representatives jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas, the Principal has made application for either a class “A” beer permit, class “A” wine permit, or a class “F” beer permit to be issued by the Alcoholic Beverages Division.

NOW THEREFORE, if the Principal shall faithfully observe and obey all of the provisions of Iowa Code chapter 123, any amendments thereto, and the division's administrative rules, then this obligation to be void, otherwise to be and remain in full force and effect.

THE SURETY on the bond of any permittee whose permit has been issued by the Alcoholic Beverages Division may at any time notify the Principal and the Alcoholic Beverages Division that the surety desires after a date named, which shall be at least thirty days after the receipt of notification, to be relieved of liability on the bond, shall be terminated and canceled on the date specified, unless supported by other sufficient bond, or bonds, and the Surety shall be relieved of all future liability after the date specified in the notice of cancellation.

THIS BOND shall be effective on \_\_\_\_\_, 20\_\_\_\_, and shall remain effective continuously without cumulative liability until canceled.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

**12.2(9) Surety change rider.**

Surety Change Rider

It is hereby understood and agreed that Bond Number \_\_\_\_\_, issued by \_\_\_\_\_ to \_\_\_\_\_, effective \_\_\_\_\_  
(Surety Company) (Principal)

\_\_\_\_\_ is amended as follows:

(Effective date of bond)

Class of license is changed from \_\_\_\_\_ to \_\_\_\_\_

Amount of Bond is changed from \_\_\_\_\_ to \_\_\_\_\_

Provided, however, that the bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified, and further that this bond and all riders attached thereto, including this rider, shall not be cumulative, and when loss shall occur under this bond during a time within which the penalty of the bond shall vary, then the aggregate liability of the Surety shall in no event exceed the largest penalty of this bond in force during the period of time within which such loss shall occur under this bond.

This rider shall become effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety Company

Countersigned

By: \_\_\_\_\_  
Resident Agent

By: \_\_\_\_\_  
Attorney-in-fact

**12.2(10) Bond for manufacturer's license in Iowa Code section 123.41.**

ALCOHOLIC BEVERAGES DIVISION  
MANUFACTURER'S LICENSE BOND

KNOW ALL BY THESE PRESENTS:

That we, the \_\_\_\_\_ of \_\_\_\_\_, Iowa, as Principal and \_\_\_\_\_ of \_\_\_\_\_, as surety, are held and firmly bound unto the STATE OF IOWA, and the ALCOHOLIC BEVERAGES DIVISION and each of them jointly, or severally, in the penal sum of FIVE THOUSAND DOLLARS (\$5,000.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

WHEREAS, the said \_\_\_\_\_ of \_\_\_\_\_ has made application under Iowa Code section 123.41 for a Manufacturer's license allowing the manufacture, storage and wholesale disposition and sale of alcoholic liquor to the Alcoholic Beverages Division and to customers outside of the state.

Now, therefore, if licensee shall faithfully and fully abide by and keep and perform each and every provision of Iowa Code chapter 123, so far as it applies to the licensee during the period for which license shall be granted, then this bond shall be of no further force or effect; otherwise, it shall remain in full force and effect and the penalty shall become payable to Alcoholic Beverages Division at Ankeny, Iowa, upon demand and equity jurisdiction is hereby consented to for the enforcement hereof.

Second, to fix and determine liability of both the principal and surety upon this bond for the full amount it shall be necessary only to prove by a fair preponderance of the evidence that licensee has violated one or more of the rules and regulations adopted by the Alcoholic Beverages Division and in force when such act or acts shall have been committed.

Third, it is specifically conditioned by the surety that it may, at anytime, on giving of sixty (60) days' notice in writing to the Alcoholic Beverages Division of a desire to be relieved from further responsibility under this bond, terminate its further responsibility for any act committed by the principal subsequent to sixty (60) days from the receipt of notice by the Alcoholic Beverages Division.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.  
This bond shall be effective for a one (1) year term beginning \_\_\_\_\_, 20\_\_\_\_, and expiring \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Principal)

BY: \_\_\_\_\_

SURETY \_\_\_\_\_

BY: \_\_\_\_\_

**12.2(11) Bond for wholesaler's license in Iowa Code section 123.42.**

ALCOHOLIC BEVERAGES DIVISION  
WHOLESALER'S LICENSE BOND

KNOW BY ALL THESE PRESENTS:

That we, the \_\_\_\_\_ of \_\_\_\_\_, Iowa, as Principal and \_\_\_\_\_ of \_\_\_\_\_ as surety, are held and firmly bound unto the STATE OF IOWA, and the ALCOHOLIC BEVERAGES DIVISION and each of them jointly, or severally, in the penal sum of ONE THOUSAND DOLLARS (\$1,000.00) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

WHEREAS, the said \_\_\_\_\_ of \_\_\_\_\_ has made application under Iowa Code section 123.42 for a Wholesaler's license allowing the storage and wholesale disposition and sale of alcoholic liquor to the Alcoholic Beverages Division and to customers outside of the state.

Now, therefore, if licensee shall faithfully and fully abide by and keep and perform each and every provision of Iowa Code chapter 123, so far as it applies to the licensee during the period for which license shall be granted, then this bond shall be of no further force or effect; otherwise, it shall remain in full force and effect and the penalty shall become payable to Alcoholic Beverages Division at Ankeny, Iowa, upon demand and equity jurisdiction is hereby consented to for the enforcement hereof.

Second, to fix and determine liability of both the principal and surety upon this bond for the full amount it shall be necessary only to prove by a fair preponderance of the evidence that licensee has violated one or more of the rules and regulations adopted by the Alcoholic Beverages Division and in force when such act or acts shall have been committed.

Third, it is specifically conditioned by the surety that it may, at any time, on giving of sixty (60) days' notice in writing to the Alcoholic Beverages Division of a desire to be relieved from further responsibility under this bond, terminate its further responsibility for any act committed by the principal subsequent to sixty (60) days from the receipt of notice by the Alcoholic Beverages Division.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.  
This bond shall be effective for a one (1) year term beginning \_\_\_\_\_, 20\_\_\_\_, and expiring \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Principal)

BY: \_\_\_\_\_

SURETY \_\_\_\_\_

BY: \_\_\_\_\_

**12.2(12)** *Certification of dramshop liability.* Rescinded **ARC 0274C**, IAB 8/8/12, effective 9/12/12.  
**12.2(13)** *Hearing complaint.*

STATE OF IOWA  
BEFORE THE ALCOHOLIC BEVERAGES DIVISION  
1918 S.E. Hulsizer  
Ankeny, Iowa 50021

IN RE: \_\_\_\_\_ ) Date \_\_\_\_\_, 20\_\_\_\_  
(insert the name of the )  
licensee, trade name of the )  
establishment and address) )  
) HEARING COMPLAINT  
Liquor Control License no. \_\_\_\_\_ )  
Beer Permit no. \_\_\_\_\_ )  
\_\_\_\_\_ )

Complaint is hereby made that on \_\_\_\_\_,  
at \_\_\_\_\_, Iowa, the above named licensee/permittee did, or by an agent,  
clerk, or employee, violate section \_\_\_\_\_ of the Code of Iowa, or violate rule  
no. \_\_\_\_\_ of the Alcoholic Beverages Division.

TO WIT:

(insert the code or rule violation)

WHEREFORE, it is requested that the administrator of the Alcoholic Beverages Division hear the proceeding in accordance with the law and regulations.

## Complainant Authority

By \_\_\_\_\_

## List of Witnesses;

(insert names and addresses of witnesses)

**12.2(14) Appeal to hearing board.** Rescinded IAB 8/18/93, effective 7/29/93.

[ARC 0274C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 123.21(4), 123.21(12), 123.30, 123.41, 123.42, 123.125 and 123.127.

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85<sup>1</sup>]

[Filed emergency 7/1/85—published 7/31/85, effective 7/1/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed 10/10/85, Notice 7/31/85—published 11/6/85, effective 12/11/85]

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed 3/14/03, Notice 8/8/01—published 4/2/03, effective 5/8/03]

[Filed ARC 0274C (Notice ARC 0157C, IAB 6/13/12), IAB 8/8/12, effective 9/12/12]

<sup>1</sup> Effective date of 12.2(7) delayed seventy days by the Administrative Rules Review Committee on 6/11/85.

CHAPTER 19  
WAIVERS FROM RULES

**185—19.1(17A) Scope.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the division. The intent of this chapter is to allow persons to seek exception to the application of rules adopted by the division.

**19.1(1) Definition.** For purposes of this chapter, a “waiver or variance” means an action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

**19.1(2) Authority.**

*a.* A waiver from rules adopted by the division may be granted in accordance with this chapter if:

- (1) The division has the authority to promulgate the rule from which the waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

- (2) No statute or rule otherwise controls the granting of a waiver from the rule from which the waiver is requested.

*b.* No waiver may be granted from a requirement that is imposed by statute. All waivers must be consistent with statute.

**185—19.2(17A) Division discretion.** The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the division upon consideration of all relevant factors. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**19.2(1) Criteria.** The division may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specific situation if the division finds each of the following:

*a.* Application of the rule would result in hardship or injustice to the person for whom the waiver is requested;

*b.* Waiver from the rule on the basis of the particular circumstances would not prejudice the substantial legal rights of any person;

*c.* Provisions of the rule subject to the request for a waiver are not specifically mandated by statute or another provision of law; and

*d.* Where applicable, 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.

**19.2(2) Determination.** In determining whether a waiver should be granted, the division shall consider whether the underlying intent of the rule is substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the requester with the overall goal of uniform treatment of all licensees and other petitioners.

**185—19.3(17A) Requester’s responsibilities.**

**19.3(1) Application.** All petitions for a waiver must be submitted in writing to the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. If the petition relates to a pending case, a copy of the petition shall also be filed in the contested case proceeding.

**19.3(2) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

*a.* Name, address, and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.

*b.* Description and citation of the specific rule from which a waiver is requested.

*c.* Specific waiver requested, including the precise scope and duration.

*d.* Relevant facts that the petitioner believes would justify a waiver. 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.* History of any prior contacts between the division 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.* Information known to the requester regarding the division's treatment of similar cases.

*g.* 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 granting of a waiver.

*h.* Name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

*i.* 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 division with information relevant to the waiver.

**19.3(3) *Burden of persuasion.*** When a petition is filed for a waiver from a division rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion in the granting of the waiver.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

**185—19.4(17A) Notice.** The division shall acknowledge a petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, 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. In addition, the division may give notice to other persons. To accomplish this notice provision, the division 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 division attesting that notice has been provided.

**185—19.5(17A) Division's responsibilities.**

**19.5(1) *Additional information.*** Prior to issuing an order granting or denying a waiver, the division 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 division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

**19.5(2) *Hearing procedures.*** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in the following situations:

- a.* To any petition for a waiver filed within a contested case;
- b.* When the division so provides by rule or order; or
- c.* When a statute so requires.

**19.5(3) *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 and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**19.5(4) *Conditions.*** The division shall condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**19.5(5) *Duration 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 division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

**19.5(6) *Time for ruling.*** The division 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 division shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**19.5(7) *When deemed denied.*** Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division.

**19.5(8) *Service of order.*** Within seven days of its issuance, any order issued under this chapter 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.

**185—19.6(17A) Public availability.** Subject to the provisions of Iowa Code section 17A.3, the division shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. 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. Orders containing information that the division is authorized or required to keep confidential shall be edited prior to public inspection.

**185—19.7(17A) Cancellation.** A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver request withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. 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
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**185—19.8(17A) Violations.** Violation of a condition in a waiver order is equivalent to a violation of the rule for which the waiver is granted. The recipient of a waiver under this chapter 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.

**185—19.9(17A) Defense.** After the division 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.

**185—19.10(17A) Appeals.** Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A.

[ARC 0273C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 17A.9A and 17A.10 and Executive Order Number 11.

[Filed 3/29/01, Notice 2/21/01—published 4/18/01, effective 5/23/01]

[Filed ARC 0273C (Notice ARC 0142C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]



CHAPTER 8  
RENEWAL AND REINSTATEMENT

**193G—8.1(17A,272C,544C) Renewal of certificates of registration.** Certificates of registration expire biennially on June 30. Following the transition period described in 193G—subrule 2.1(4), certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to the expiration date. However, the board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee of \$25 within 30 days of the date of expiration. A registrant who fails to renew by the expiration date is not authorized to use the title of registered interior designer in Iowa until the certificate is reinstated as provided in rule 193G—3.2(17A,272C,544C).

**8.1(1)** It is the policy of the board to mail to each registrant at the registrant's last-known address a notice of the pending expiration date approximately one month prior to the date the certificate of registration is scheduled to expire. Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee. A registrant should contact the board office if the registrant does not receive a renewal notice prior to the date of expiration.

**8.1(2)** If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant failed to satisfy the continuing education provisions required as a condition for registration. If the basis for denial is a pending disciplinary action or disciplinary investigation that is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

**8.1(3)** When a registrant appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant. Any additional hours of continuing education completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not fulfilled. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the registrant pursuant to 193—subrule 7.40(1).

**8.1(4)** The board may notify registrants whose certificates of registration have expired. The failure of the board to provide this courtesy notification or the failure of the registrant to receive the notification shall not extend the date of expiration.

**8.1(5)** A registrant who continues to use the title of registered interior designer in Iowa after the registration has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's application for reinstatement.

**8.1(6)** Registrants shall notify the board within 30 days of any change of address or business.  
[ARC 0252C, IAB 8/8/12, effective 9/12/12]

**193G—8.2(544C,17A) Reinstatement of certificates of registration.** An applicant for reinstatement must inform the board in writing of the intention to reinstate. The board shall use the following criteria when determining the requirements for reinstatement:

**8.2(1)** An individual may reinstate an expired certificate within two years by:

- a.* Paying the reinstatement fee of \$100;
- b.* Paying the current renewal fee;
- c.* Providing a written statement outlining the professional activities of the applicant during the period of nonregistration;
- d.* Submitting documented evidence of completion of 6 contact hours (4 contact hours in public protection subjects) of continuing education for each year or portion of a year of expired registration in compliance with requirements in 193G—Chapter 3. The hours reported shall be in addition to the 12 contact hours (8 contact hours in public protection subjects) which should have been reported on the June 30 renewal date at which the registrant failed to renew. The continuing education hours used for reinstatement may not be used again at the next renewal.

**8.2(2)** An individual may reinstate a certificate which has been expired for more than two years by:

- a.* Paying the reinstatement fee of \$100;
- b.* Paying the current renewal fee;
- c.* Providing a written statement outlining the professional activities of the applicant during the period of nonregistration;
- d.* Submitting documented evidence of completion of continuing education as determined by the board. The board shall require no more than 24 contact hours (16 contact hours in public protection subjects); however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate.

**8.2(3)** The board shall review reinstatement applications on a case-by-case basis and may, at its discretion, require that the applicant take additional measures as directed by the board as a prerequisite to reinstatement.

[Filed 9/7/07, Notice 7/18/07—published 9/26/07, effective 10/31/07]

[Filed ARC 0252C (Notice ARC 0141C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]

## HISTORICAL DIVISION[223]

[Prior to 5/31/89, see Historical Department[490]  
created under the “umbrella” of the Department of Cultural Affairs[221] by Iowa Code section 303.1]

### TITLE I GENERAL SOCIETY PROCEDURES

#### CHAPTER 1 DESCRIPTION OF ORGANIZATION

1.1(303)	Purpose
1.2(17A,303)	Definitions
1.3(303)	Mission statement
1.4(303)	Organization
1.5(303)	Facilities management
1.6(303)	Board of trustees
1.7(303)	Gifts, bequests, endowments
1.8(303)	Public and private grants and donations
1.9(303)	Sale of mementos

#### CHAPTER 2 Reserved

#### CHAPTER 3 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

3.1(17A,22)	Definitions
3.2(17A,22)	Statement of policy and scope
3.3(17A,22)	Request for access to records
3.4(17A,22)	Access to confidential records
3.5(17A,22)	Requests for treatment of a record as a confidential record and its withholding from examination
3.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
3.7(17A,22)	Consent to disclosure by the subject of a confidential record
3.8(17A,22)	Notice to suppliers of information
3.9(17A,22)	Availability of records
3.10(17A,22)	Determination of rights of access to records

#### CHAPTER 4 AGENCY PROCEDURE FOR RULE MAKING (Uniform Rules)

4.4(17A)	Notice of proposed rule making
4.5(17A)	Public participation
4.6(17A)	Regulatory flexibility analysis
4.10(17A)	Exemptions from public rule-making procedures
4.11(17A)	Concise statement of reasons
4.13(17A)	Agency rule-making record

#### CHAPTER 5 PETITIONS FOR RULE MAKING (Uniform Rules)

5.1(17A)	Petition for rule making
5.3(17A)	Inquiries

CHAPTER 6  
DECLARATORY RULINGS  
(Uniform Rules)

- 6.1(17A) Petition for declaratory ruling
- 6.3(17A) Inquiries

CHAPTERS 7 to 9  
Reserved

TITLE II  
Reserved

CHAPTERS 10 to 12  
Reserved

TITLE III  
*HISTORICAL SOCIETY—  
GENERAL POLICIES*

CHAPTER 13  
COLLECTIONS POLICIES

- 13.1(303) Purpose
- 13.2(303) Definitions
- 13.3(303) Location
- 13.4(303) Management of collections
- 13.5(303) Acquisition
- 13.6(303) Deaccession
- 13.7(303) Documentation and care
- 13.8(303) Lending
- 13.9(303) Access and disclosure

CHAPTER 14  
EXHIBITIONS POLICIES

- 14.1(303) Purpose
- 14.2(303) Location
- 14.3(303) Collections principles and practices
- 14.4(303) Conservation principles and practices
- 14.5(303) Education principles and practices
- 14.6(303) Professional museum principles and practices

CHAPTER 15  
PUBLICATION POLICIES AND SERVICES

- 15.1(303) Purpose
- 15.2(303) Iowa Heritage Illustrated
- 15.3(303) Annals of Iowa
- 15.4(303) Goldfinch
- 15.5(303) Iowa Historian
- 15.6(303) Books and monographs
- 15.7(303) Back issues and reprints

CHAPTERS 16 to 20  
Reserved

TITLE IV  
*PUBLIC ACCESS PROCEDURES*

CHAPTER 21  
MEMBERSHIP IN THE SOCIETY

- 21.1(303) Function
- 21.2(303) Fees
- 21.3(303) Awards

CHAPTER 22  
HISTORICAL LIBRARY AND STATE ARCHIVES PUBLIC ACCESS POLICIES AND SERVICES

- 22.1(303) Purpose
- 22.2(303) Definitions
- 22.3(303) Location
- 22.4(303) Availability of materials
- 22.5(303) Reading room policies
- 22.6(603) Copy services

CHAPTER 23  
HISTORICAL MARKERS PROGRAM

- 23.1(303) Purpose
- 23.2(303) Categories of historical markers
- 23.3(303) Selection of historical markers
- 23.4(303) Appeals

CHAPTERS 24 to 34  
Reserved

TITLE V  
*HISTORIC PRESERVATION PROGRAMS*

CHAPTER 35  
ADMINISTRATION

- 35.1(303) Purpose
- 35.2(303) Definitions
- 35.3(303) Organization of programs
- 35.4(303) Eligibility
- 35.5(303) Contracts and grants
- 35.6(303) Advisory committees
- 35.7(303) Grants available
- 35.8(303) Reporting and audit requirements

CHAPTER 36  
CERTIFIED LOCAL GOVERNMENT PROGRAM

- 36.1(303) Purpose
- 36.2(303) Regulations
- 36.3(303) Criteria for certification
- 36.4(303) Procedure for certification
- 36.5(303) Funding of certified local governments
- 36.6(303) Other program services

CHAPTER 37  
INVESTMENT TAX CREDIT PROGRAM

- 37.1(303) Purpose
- 37.2(303) Regulations
- 37.3(303) Eligibility
- 37.4(303) Certification of historic structures
- 37.5(303) Review and evaluation
- 37.6(303) Certification of completion of work

CHAPTER 38  
NATIONAL REGISTER OF HISTORIC PLACES

- 38.1(303) Purpose
- 38.2(303) Regulations
- 38.3(303) Nomination procedure
- 38.4(303) Review of nominations
- 38.5(303) Delisting of properties

CHAPTER 39  
EDUCATION PROGRAM

- 39.1(303) Purpose
- 39.2(303) Regulations
- 39.3(303) Procedure

CHAPTER 40  
PRESERVATION PARTNERSHIP PROGRAM

- 40.1(303) Purpose
- 40.2(303) Regulations
- 40.3(303) Application procedure and selection

CHAPTER 41  
SURVEY AND REGISTRATION OF CULTURAL RESOURCES PROGRAM

- 41.1(303) Purpose
- 41.2(303) Regulations
- 41.3(303) Survey selection
- 41.4(303) Survey funding
- 41.5(303) Conduct of the surveys
- 41.6(303) Availability of survey information
- 41.7(303) Confidentiality of archaeological site information

CHAPTER 42  
REVIEW AND COMPLIANCE PROGRAM

- 42.1(303) Purpose
- 42.2(303) Federal regulations and requirements
- 42.3(303) Professional qualifications
- 42.4(303) Definitions
- 42.5(303) Procedures
- 42.6(303) Level of effort required to identify historic properties
- 42.7(303) Review and appeal of the recommendations and decisions of the state historic preservation officer

CHAPTER 43  
TECHNICAL ASSISTANCE PROGRAM

- 43.1(303) Purpose
- 43.2(303) Regulations
- 43.3(303) Services

CHAPTER 44  
STATE REGISTER OF HISTORIC PLACES PROGRAM

- 44.1(303) Purpose
- 44.2(303) Regulations and procedures

CHAPTER 45  
Reserved

CHAPTER 46  
MAIN STREET LINKED INVESTMENTS LOAN PROGRAM  
Program administered

- 46.1(12)

CHAPTER 47  
HISTORIC PROPERTY REHABILITATION TAX EXEMPTION

- 47.1(303) Purpose
- 47.2(303) Definitions
- 47.3(303) Program administration
- 47.4(303) Eligibility
- 47.5(303) Application for exemption procedure
- 47.6(303) Review and approval standards for applications for certification
- 47.7(303) Appeals

CHAPTER 48  
HISTORIC PRESERVATION AND CULTURAL AND  
ENTERTAINMENT DISTRICT TAX CREDITS

- 48.1(303,404A) Purpose
- 48.2(303,404A) Definitions
- 48.3(303,404A) Eligible property
- 48.4(303,404A) Qualified and nonqualified rehabilitation costs
- 48.5(303,404A) Rehabilitation cost limits and amount of credit
- 48.6(303,404A) Application and review process
- 48.7(303,404A) Tax credit funds
- 48.8(303,404A) Sequencing of applications for review
- 48.9(303,404A) Reserved tax credits
- 48.10(303,404A) Project commencement
- 48.11(303,404A) Project completion and eligible property placed in service
- 48.12(303,404A) Abandonment and recapture of tax credit reservation
- 48.13(303,404A) Transfer of tax credit certificate
- 48.14(303,404A) Redemption of tax credit certificate
- 48.15(303,404A) Tax credits in excess of tax liability
- 48.16(303,404A) Application processing fees
- 48.17(303,404A) Appeals

TITLE VI  
*GRANT PROGRAMS*

CHAPTER 49  
HISTORICAL RESOURCE DEVELOPMENT PROGRAM GRANTS

- 49.1(303) Purpose
- 49.2(303) Definitions
- 49.3(303) Funding policies
- 49.4(303) Record keeping and retention
- 49.5(303) Appeals

CHAPTER 50  
HISTORIC SITE PRESERVATION GRANT PROGRAM

- 50.1(303) Purpose
- 50.2(303) Definitions
- 50.3(303) Application procedures
- 50.4(303) Project review and selection
- 50.5(303) Application rating system
- 50.6(303) Grant administration
- 50.7(303) Informal appeals
- 50.8(303) Emergency grants

TITLE V  
HISTORIC PRESERVATION PROGRAMSCHAPTER 35  
ADMINISTRATION

[Prior to 5/31/89, see [490] Ch 10]

**223—35.1(303) Purpose.** The historic preservation program operates to survey, evaluate significance, nominate to the National Register of Historic Places, and protect the historic buildings, structures, historic sites, objects, districts and landscapes of Iowa. Through the historic preservation program the society creates, fosters, and plans for the preservation of Iowa's historic resources.

**223—35.2(303) Definitions.** The definitions listed in Iowa Code section 17A.2 and rule 223—1.2(303), Iowa Administrative Code, shall apply for terms as they are used throughout Title V of these rules. In addition, the following definitions apply:

*“Act”* means the National Historic Preservation Act of 1966, Public Law 89-665, as amended through December 22, 2006 (16 U.S.C. §470 et seq.).

*“Advisory Council”* means the Advisory Council on Historic Preservation established under the Act.

*“Applicant”* means any individual or entity seeking funding, permitting, licensing or approval from a federal agency or funding or service for a historic preservation activity from the society.

*“Certified local government”* means a unit of local government which is certified by the National Park Service to carry out the purposes of the National Historic Preservation Act in accordance with Sections 101(c), 103(c) and 301 of the Act and 36 CFR Part 61.

*“Considered eligible”* means properties formally determined as eligible in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

*“Deputy state historic preservation officer”* means the designee of the state historic preservation officer who is responsible for the daily administration of the historic preservation program in the state.

*“Determination of eligibility”* means the process described in 36 CFR § 800.4(c) for evaluating the historic significance of identified properties.

*“Historic context”* means a historical theme summary created for planning purposes that links historical information with related historic properties based on the minimal components of a shared theme, specific time period, and geographical area.

*“Historic preservation”* includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.

*“Historic Preservation Fund”* means the federal source from which moneys are appropriated to fund the program of matching grants-in-aid to the states and other authorized grant recipients for historic preservation programs, as authorized by Section 108 of the National Historic Preservation Act as amended through December 22, 2006.

*“Historic property”* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register of Historic Places. “Historic property” includes artifacts, records, and material remains that are related to such properties or resources.

*“Investment tax credit”* means a federal income tax credit for the substantial rehabilitation of historic buildings for commercial, industrial, and rental residential and nonresidential purposes.

*“National Register of Historic Places”* means the national list of historic properties significant in American history, architecture, archaeology, engineering, or culture, maintained by the Secretary of the Interior.

*“National Trust for Historic Preservation”* means the private, nonprofit organization chartered by legislation approved by Congress on October 26, 1949, with the responsibility for encouraging public participation in the preservation of districts, structures, sites, buildings, and objects significant in American history and culture.

“*Review and compliance*” means the review of undertakings pursuant to Section 106 of the Act and its implementing regulations at 36 CFR Part 800.

“*Secretary’s Standards and Guidelines*” means the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation (36 CFR Part 61), which provide technical information about archaeological and historic preservation activities and methods. The subjects covered include preservation planning; identification, evaluation, registration, historic research and documentation; architectural and engineering documentation; archaeological investigation; historic preservation projects; and preservation terminology.

“*Section 106*” means the section of the Act that requires federal agencies to take into account the effects of the undertakings that the agencies carry out, fund, license, permit or approve on historic properties and afford the Advisory Council a reasonable opportunity to comment. The regulations of 36 CFR Part 800 define the process used by an agency to meet these responsibilities and the role of the state historic preservation officer in review and comment on these undertakings.

“*State historic preservation officer*” or “*SHPO*” means the governor’s appointee who is responsible for the management of the historic preservation program of the state and compliance of the state historic preservation program with federal statutes and regulations including those of the National Park Service.

“*State historic preservation review board*” means the Iowa state national register of historic places nominations review committee established as provided in Section 101(b)(1)(B) of the Act:

1. The members of which are appointed by the SHPO (unless otherwise provided for by state law);
2. A majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture; and
3. Which has the authority to:
  - Review National Register nominations and appeals from nominations;
  - Review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
  - Provide general advice and guidance to the state historic preservation officer; and
  - Perform such other duties as may be appropriate.

“*Technical assistance*” means services provided for the development of skills or the provision of knowledge relative to the background, significance, operation, or implications of some aspect of the historic preservation program.

[ARC 0267C, IAB 8/8/12, effective 9/12/12]

**223—35.3(303) Organization of programs.** The division operates the following preservation programs:

1. Certified Local Governments;
2. Investment Tax Credits;
3. National Register of Historic Places;
4. Education;
5. Preservation Partnership;
6. Survey and Inventory of Cultural Resources;
7. Review and Compliance;
8. Technical Assistance;
9. State Register of Historic Places; and
10. Comprehensive Preservation Planning.

**223—35.4(303) Eligibility.**

**35.4(1)** Participation in any historic preservation program is open to any individual, community, organization, or governmental unit which meets the requirements of the specific program as determined by the state historic preservation officer.

**35.4(2)** Recipients of Federal Historic Preservation Fund moneys shall agree when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing

projects or programs funded in whole or in part with federal money, to clearly state the percentage of the total cost of the program or project which will be financed with federal money, and the dollar amount of federal funds for the project or program as well as contributions by the society.

**35.4(3)** All programs supported by Federal Historic Preservation Fund moneys shall be open to the public.

**223—35.5(303) Contracts and grants.**

**35.5(1)** Funds from other federal programs, with the exception of specially identified programs, shall not be used to match Federal Historic Preservation Fund grants.

**35.5(2)** Applications shall be submitted on the appropriate forms and with the requested supporting materials to be considered for funding.

**35.5(3)** Unless otherwise specified in a prior written contract, all products, artifacts, patents, copyrights, or legal interests of relevance to projects funded by Federal Historic Preservation Fund moneys shall become the sole and exclusive property of the society.

**35.5(4)** All applications for grants or contracts may be submitted to the Certified Local Governments Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-8741.

**35.5(5)** All applications for funding shall be reviewed by a staff person. An advisory committee may be appointed to assist in the review process. All grant or contract awards shall receive the written approval of the state historic preservation officer.

**35.5(6)** Evaluation criteria. The following evaluation criteria shall be applied to all grant or contract applications:

- a. Compliance with state and federal standards and grant guidelines.
- b. Clearly stated or specific goals that can be realistically attained within the funding period and proposed budget.
- c. Measurable results or products (number, quality).
- d. Linkage with goals and objectives embodied in state or local preservation plans.
- e. Past grant/contract performance of applicant.

**35.5(7) Appeals.**

a. Eligible applicants, whose applications are not funded or otherwise serviced adequately, in the view of the applicant, shall have the right of appeal.

b. If state funds are involved in the grant or contract, the first appeal shall be directed to the deputy state historic preservation officer; the second appeal shall be directed to the state historic preservation officer; and the final appeal shall be directed to the director of the department of cultural affairs. All appeals shall be mailed to the appropriate official at the State Historical Society of Iowa or the Department of Cultural Affairs, Capitol Complex, Des Moines, Iowa 50319, (515)281-8741; (515)281-8837; (515)281-6258.

c. The initial appeal shall be received within 15 days of the notification of the selection.

d. The written appeal shall contain the following items:

- (1) Facts of the appeal;
- (2) Argument in favor of the appeal; and
- (3) Remedy sought.

e. Appeals shall be considered on the grounds that staff or review committee action was:

- (1) Outside the statutory authority;
- (2) Violated state or federal law;
- (3) Afforded inadequate public notice;
- (4) Procedure was altered to the detriment of the applicant without sufficient prior notice; or
- (5) A conflict of interest.

f. The deputy state historic preservation officer, state historic preservation officer, and director of the department of cultural affairs shall successively consider and rule on the appeal. Each officer shall notify the appellant of the decision within 30 days.

If the decision and remedy is believed insufficient by the appellant, the next step of the appeal process may be contacted. The decision of the director of the department of cultural affairs shall be final except as provided by Iowa Code sections 17A.19 and 17A.20.

If federal funds are involved, the first appeal shall be directed to the deputy state historic preservation officer; the second appeal shall be directed to the state historic preservation officer; and subsequent appeals to the National Park Service. Inquiries and appeals related to federal funds may be directed to the Rocky Mountain Regional Office, Division of Cultural Resources, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225, (303)969-2875.

### **223—35.6(303) Advisory committees.**

**35.6(1)** Advisory committees may be appointed by the state historic preservation officer for the purpose of conducting peer reviews of grant products, reviewing and rating grant applications for funding, nominating historic resources to the National Register of Historic Places, and providing other professional input.

**35.6(2)** Advisory committees may be permanent or temporary. The term of office on temporary advisory committees shall be determined by the state historic preservation officer.

**35.6(3)** Recommendations by all advisory committees shall be nonbinding on the state historic preservation officer.

**35.6(4)** Members of an advisory committee shall not submit an application for a grant or contract from the state historical society of Iowa. Action by an advisory committee member shall be in accordance with Iowa Code chapter 68B and 223—subrule 1.6(6), Iowa Administrative Code.

**35.6(5)** Members of advisory committees may be reimbursed for travel, lodging, and expenses at the discretion of the deputy state historic preservation officer.

**35.6(6)** Iowa state national register of historic places nominations review committee.

*a.* The committee shall be a permanent advisory committee within the historic preservation program.

*b.* Responsibilities. The committee shall have the following responsibilities as a minimum:

(1) Review of all nominations of Iowa properties to the National Register of Historic Places for the purpose of determining if the property meets the National Register criteria for significance, and recommending that the state historic preservation officer nominate or reject the proposed nomination;

(2) Review of appeals to National Register nomination and provide written opinions on the significance of the properties;

(3) Advise the deputy state historic preservation officer concerning Historic Preservation Fund grant applications, end-of-year reports, and the state comprehensive historic preservation plan;

(4) Provide general advice, guidance, and professional recommendations to the state historic preservation officer in carrying out the duties and responsibilities assigned by the federal program in Procedures for Approved State and Local Historic Preservation Programs 36 CFR 61, April 13, 1984, and August 30, 1984; and

(5) Approve operating bylaws consistent with federal regulations.

*c.* Membership.

(1) The committee shall be composed of no more than 12 voting members, all of whom are citizens of Iowa, and the majority of whom are professionals in historic preservation disciplines of American history, architectural history, architecture, prehistoric and historical archaeology, or related professional disciplines.

The committee may include citizen members, representatives of other preservation-related professions, and nonvoting members.

(2) The committee may include two nonvoting or ex officio members appointed by representatives of primary public preservation organizations.

*d.* Qualifications.

(1) The professional requirement for historians and architectural historians shall consist of a graduate degree, or a bachelor's degree with two years of relevant experience. The bachelor's degree shall include a concentration of study in American history or American architecture. Substantial

contributions to the discipline's field of scholarly knowledge through research and publication may be accepted in lieu of experience.

(2) The professional requirement for an archaeologist shall be a graduate degree in archaeology, one year of relevant experience with a minimum of four months' independent research as a principal investigator in North American archaeology, and demonstrated ability to complete research.

(3) The professional requirement for an architect shall be a bachelor's degree in architecture and two years' relevant experience or a state license.

*e.* Appointment. The state historic preservation officer shall appoint members to the committee. Approval of appointees by the Department of the Interior shall be obtained. The state historic preservation officer shall seek to appoint members consistent with affirmative action policy; reflective of the urban-rural, regional and minority representation concerns of Iowa; and representative of citizen expertise in the field of historic preservation.

*f.* Term of office.

(1) The term of office for committee members shall be three years. The terms shall be staggered to permit one-third of the appointments to be made each year.

(2) The term of appointment shall begin on January 1 and be effective through December 31 three years later.

*g.* Meeting procedures.

(1) Members shall be reimbursed for travel, lodging, and expenses incurred in the performance of committee service.

(2) Members shall adhere to the conflict of interest statements in accordance with federal regulations stated in the National Register Programs Manual, NPS-49, Chapter 3 and 223—1.6(6), Iowa Administrative Code.

(3) Committee members shall refrain from voting and commenting upon any nominated property for which the member serves as an officer, trustee, fiduciary employee, or for which the member has consulted either for remuneration or gratis in the preparation of the nomination, or for which the member has or expects to participate in the development or use of the property.

(4) The committee shall meet quarterly. The committee may schedule additional meetings as necessary to carry out its business.

(5) The state historic preservation officer or designee shall preside at all meetings of the committee.

(6) Members are permitted to miss no more than two regular meetings in a year and shall notify the deputy state historic preservation officer at their earliest opportunity of the need to miss a meeting. If a member misses more than two regular meetings in a year, the state historic preservation officer may replace the member.

(7) Meetings shall be open meetings conducted in accordance with Iowa Code chapter 21 and Robert's Rules of Order, Revised Edition.

(8) The quorum necessary to conduct committee business shall be a majority of full, active, voting members of the committee. Acceptance of nominations for recommendation to the National Register of Historic Places shall be a majority of full, active committee members present. No nomination shall be considered by the committee unless one committee member with professional expertise in the area of nomination is present.

(9) Citizens may appear before the committee to discuss a nomination. The length of presentations may be limited by the chair.

**223—35.7(303) Grants available.** The following categories of historic preservation grants may be funded:

**35.7(1) Survey and planning subgrants.**

*a. Purpose.* The program provides funds for planning and implementation of activities related to the survey, evaluation, nomination, and protection of Iowa's cultural resources.

*b. Procedure.*

(1) Individuals or other entities may submit survey or planning proposals to the deputy state historic preservation officer during the annual workplan development period between June 1 and August 31. If

the proposal is accepted, a competitive bidding process shall be held. The individual or entity suggesting the proposal may be an eligible bidder.

(2) Allowable activities shall include the survey of cultural resources, nomination and evaluation of cultural resources, research on historic contexts, and preservation planning.

(3) All applicants are encouraged to include community involvement and local volunteer participation.

(4) All grants under this program require match equal to or greater than 30 percent of state funding.

(5) All questions and applications may be directed to Deputy State Historic Preservation Officer, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-8741.

**35.7(2) Preservation partnership subgrants.**

*a. Purpose.* This program provides preservation education and technical assistance for a one-year period to a competitively selected multicounty area which has not been the subject of a cultural resources survey and does not participate in the certified local government program.

*b. Procedure.*

(1) Individuals or other entities may submit competitive applications for the selection of their two-or three-county area to the deputy state historic preservation officer during the annual workplan development period between March 1 and April 15. Potential applicants shall be notified by a mailing to all county boards of supervisors and county and local historical organizations in counties with no county preservation commissions or existing cultural resource surveys 45 days prior to the application deadline. Award decisions shall be made by May 15 of each year.

(2) Applicants shall identify goals and objectives to be achieved during the project, interested individuals and organizations, sources of potential matching funds, known historical resources in the county, and a potential local project coordinator for each county.

(3) Survey and planning grants may be awarded in the same project area.

(4) All applicants are encouraged to include community involvement and local volunteer participation.

(5) All proposals shall be limited to activities to be completed within one year.

(6) All questions and applications may be directed to Deputy State Historic Preservation Officer, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-8719.

**35.7(3) Certified local government subgrants.**

*a. Purpose.* This program seeks to enrich, develop, and help local historic preservation programs in cooperation with state and federal historic preservation programs.

*b. General policy.*

(1) Only certified local governments shall be eligible to apply for and receive a grant through this program.

(2) The state historic preservation officer shall not be required to award funds to all certified local governments.

(3) The program shall operate as a competitive grant program.

(4) Following the award of a grant a contractual agreement specifying the terms of the grant shall be executed between the society and the grant recipient.

*c. Procedure.*

(1) Application packets shall be sent to all eligible applicants at least 45 days prior to each application deadline.

(2) All applications shall be submitted on the forms provided by the state historical society of Iowa. All applications shall contain a description of the proposed project including a time schedule for implementation; the amount of grant funds requested; the amount, kind, and source of local match which is committed to the project; a budget for the project; written assurance that the applicant shall follow the Secretary of the Interior's Standards for Archaeology and Historic Preservation; and written assurance that the applicant shall select a principal investigator who meets the Secretary of the Interior's professional qualification standards.

(3) Survey projects shall have local match not less than 30 percent of the total project cost. All other types of projects shall have local match not less than 50 percent of total project cost.

(4) Staff shall be available for consultation with applicants regarding the development of project proposals.

(5) Staff shall review applications for completeness and eligibility upon receipt of the application. Incomplete or ineligible applications shall be returned to the applicant. The applicant may correct and return the application prior to the grant deadline.

(6) Program staff shall conduct a preliminary review of each application to determine eligibility, completeness, consistency with program purpose, and amount of local match. Applications which do not meet these criteria shall not be considered for funding. Results of the staff review shall be transmitted to the state National Register nominations review committee which will prepare recommendations for the board of trustees.

(7) Applications shall be reviewed by the state National Register nominations review committee at a regular meeting closely following the application deadline. The date of review shall be established by the administrator of the society. Recommendations from the committee shall be submitted to the board of trustees for formal approval. Final authority for funding shall rest with the state historic preservation officer.

(8) Applicants objecting to the decision of the state historic preservation officer may appeal to the National Park Service. Inquiries and appeals may be directed to the Rocky Mountain Regional Office, Division of Cultural Resources, National Park Service, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225, (303)969-2875.

*d. Grant awards.*

(1) Upon the approval of a grant by the state historic preservation officer, a grant agreement shall be prepared that specifies the terms and conditions of the grant, including the grant amount, project description, matching requirements, and dates for the submission of specified products.

(2) The grant agreement shall be signed by the state historic preservation officer or designee and the chief elected local official of the certified local government or designee.

(3) If grant funds are awarded and later the certified local government determines that the project cannot be completed, the certified local government coordinator shall recommend to the state historic preservation officer alternatives for expenditure of the funds. The decision of the state historic preservation officer shall be final.

**223—35.8(303) Reporting and audit requirements.**

**35.8(1)** The state historical society of Iowa may require subgrantees to submit progress reports on the status of projects.

**35.8(2)** All subgrantees shall submit a financial compliance audit of their subgrant project expenditures.

**35.8(3)** All subgrantees shall submit documentation of expenses for all subgrant expenditures.

**35.8(4)** All inquiries and applications may be directed to the Certified Local Government Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-6826.

These rules are intended to implement Iowa Code section 303.2 and Iowa Code chapter 303, subchapter II.

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CHAPTER 42  
REVIEW AND COMPLIANCE PROGRAM

**223—42.1(303) Purpose.** The review and compliance program implements state historic preservation program activities to advise and assist public (federal, state, and local government) agencies in carrying out their historic preservation responsibilities broadly described and established under the National Historic Preservation Act, particularly Sections 106 and 110, as well as other state and federal historic preservation laws and regulations.

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

**223—42.2(303) Federal regulations and requirements.** The Iowa review and compliance program shall operate in accordance with the following requirements:

**42.2(1)** The National Historic Preservation Act (16 U.S.C. 470 et seq.).

**42.2(2)** Title 36 of the Code of Federal Regulations Part 60 (36 CFR 60).

**42.2(3)** Title 36 of the Code of Federal Regulations Part 61 (36 CFR 61).

**42.2(4)** Title 36 of the Code of Federal Regulations Part 63 (36 CFR 63).

**42.2(5)** Title 36 of the Code of Federal Regulations Part 800 (36 CFR 800).

**42.2(6)** Contract requirements outlined in the state of Iowa's Historic Preservation Fund grant agreement with the National Park Service, including requirements described in the Historic Preservation Fund Grants Manual, special conditions attached to the grant agreement, and any other National Park Service requirement considered a condition of receiving the annual federal grant.

**42.2(7)** Nationwide Programmatic Agreements and other federal program alternatives executed or issued by the Advisory Council on Historic Preservation under 36 CFR §800.14, as applicable.

**42.2(8)** State-level programmatic agreements and memoranda of agreements executed under 36 CFR §§800.6 and 800.14.

**42.2(9)** Easements and covenants granted pursuant to the implementation of state historic preservation program activities.

**42.2(10)** Iowa Code chapter 303.

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

**223—42.3(303) Professional qualifications.** In keeping with federal Historic Preservation Fund grant requirements, the department shall employ a professionally qualified staff that meets the requirements set forth in 36 CFR §61.4(e).

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

**223—42.4(303) Definitions.** Unless the context requires otherwise, the definitions provided in the National Historic Preservation Act and its implementing regulations at 36 CFR Part 60, 36 CFR Part 61, and 36 CFR Part 800 shall apply to terms as they are used through this chapter. In addition, the following definitions apply:

*“Act”* means the National Historic Preservation Act (16 U.S.C. §470 et seq.).

*“Agency”* means federal agency.

*“Agreement”* means any agreement executed in accordance with the regulations implementing Section 106 at 36 CFR Part 800 and any agreement authorized by Iowa Code section 28E.4.

*“Area of potential effects”* or *“APE”* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)).

*“Historic property”* means “historic property” as defined in Section 301(5) of the National Historic Preservation Act as amended through December 22, 2006 (16 U.S.C. §470w(5)).

*“Recommendations and decisions”* means the actions taken by the SHPO to advise and assist federal agencies in carrying out their Section 106 responsibilities.

“*Undertaking*” means, as defined in Section 301 of the National Historic Preservation Act, a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (1) those carried out by or on behalf of the federal agency; (2) those carried out with federal financial assistance; (3) those requiring a federal permit, license or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

### **223—42.5(303) Procedures.**

**42.5(1) *Technical assistance.*** The state historic preservation office (SHPO) shall advise and assist federal agencies in carrying out their responsibilities under the Act (and other federal historic preservation laws) and shall cooperate with federal agencies, state agencies, local governments, or their applicants; organizations; and individuals to ensure historic properties are taken into consideration at all levels of planning and development.

#### **42.5(2) *SHPO review of federal undertakings.***

*a.* In accordance with applicable federal and state laws and regulations, agency officials and agency program applicants or recipients requesting the views of the SHPO on an undertaking shall submit documentation regarding the undertaking and potential effects to historic properties.

*b.* The SHPO shall make available forms intended to assist agency officials and agency program applicants and recipients in organizing information and to allow the review and compliance program staff and other consulting parties to render informed advice on an undertaking. Forms will be made available on the state historical society of Iowa Web site. Submittals shall be directed to Review and Compliance Coordinator, State Historical Society of Iowa, Des Moines, Iowa 50319.

*c.* The SHPO shall respond to initial determinations submitted by an applicant or groups of applicants authorized to initiate consultation by the agency pursuant to 36 CFR §800.2(c)(4) or to a final agency determination of eligibility.

*d.* The SHPO shall apply the National Register Criteria for Evaluation when opining on determinations of National Register eligibility.

*e.* With respect to the determination of whether a property is eligible for listing, in the event that the SHPO and the agency official do not agree as to the determination of eligibility, the SHPO shall include an explanation of its opinion which shall be based on the National Register criteria and relevant National Park Service guidelines for evaluation of historic properties.

*f.* The SHPO may respond to agency determinations and findings of effect.

*g.* A SHPO nonconcurrency with an agency finding of effect shall include an explanation based upon the Advisory Council’s criteria of adverse effect in accordance with 36 CFR §800.5(a).

*h.* If the SHPO elects to consult, the SHPO shall respond within 30 calendar days of receipt of an agency’s request for review of a finding or determination in accordance with 36 CFR §800.3(c)(4) and the National Park Service’s applicable requirements. The SHPO shall base any recommendations upon consideration of all of the factors enumerated in 36 CFR §800.4(b)(1).

*i.* The recommendations and decisions of the SHPO are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in rule 223—42.7(303). To facilitate this opportunity for review, the SHPO will generally submit its recommendation to the director within 14 calendar days of receipt.

*j.* If the director is unable to make a determination regarding the request for review within the federally mandated 30-day consultation period, the director may, upon advising the applicant, request that the federal agency extend the consultation period for such time as the director requires to make such a determination.

**42.5(3) *Resolution of adverse effects.*** The SHPO shall participate in the consultation to develop and evaluate alternatives or modifications to undertakings that could avoid, minimize, or mitigate adverse effects on historic properties in accordance with the provisions of 36 CFR §800.6 or the terms of executed agreements, easements and covenants.

**42.5(4) *Emergency procedures.*** The SHPO shall abide by the procedures that govern an agency's historic preservation responsibilities during any disaster or emergency in lieu of 36 CFR §§800.3 through 800.6.

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

**223—42.6(303) Level of effort required to identify historic properties.**

**42.6(1)** The level of effort required to meet the “reasonable and good faith” standard in Section 106 review is set forth in 36 CFR §800.4. The level of effort required shall be based on past planning, research and studies; the magnitude and nature of the undertaking and the degree of federal involvement; the nature and extent of potential effects on historic properties; and the likely nature and location of historic properties within the APE and may consist of any combination of background research, consultations, oral history interviews, sample field investigations and field surveys. In order to balance the mission and needs of a federal agency and its proposed project, the SHPO shall balance the level of effort and resources necessary to identify and preserve archaeological sites with the project benefits, costs, schedules and local issues that, in part, comprise the broader public interest.

**42.6(2)** In response to the agency's request for consultation, the SHPO shall base any recommendation for the identification of historic properties upon a review of the documentation provided by an agency pursuant to the reasonable and good-faith standard in conformance with the factors set forth in 36 CFR §800.4(b)(1).

**42.6(3)** It is the statutory obligation of the federal agency to fulfill the requirements of Section 106.

**42.6(4)** The level of effort required of rural electric cooperatives and municipal utilities shall be consistent with the requirements set forth in 2011 Iowa Code Supplement section 303.18.

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

**223—42.7(303) Review and appeal of the recommendations and decisions of the state historic preservation officer.**

**42.7(1)** In addition to any other review or appeal process afforded under federal or state law and regulations, the recommendations and decisions of the state historic preservation officer are subject to the review and approval of the director. This review may be initiated by the director for any reason or may be requested in the manner described in this rule.

**42.7(2)** A person, as defined in Iowa Code section 4.1(20), requesting the review of a recommendation or decision of the state historic preservation officer directly affecting that person shall provide the director with the following information, orally or in writing:

- a. Name and address of the requester.
- b. A description of the action of the SHPO requested to be reviewed.
- c. A short and plain statement of the reasons the review is requested.

**42.7(3)** Within 15 days following receipt of a request for review, the director shall notify the requester of the disposition of the request or of the need for additional information. Within 30 days following the receipt of the requested additional information, the director will notify the requester in writing of the disposition of the request for review.

**42.7(4)** A decision of the director is final. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A.

[ARC 0268C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code section 303.2 and Iowa Code chapter 303, subchapter II.

[Filed without Notice 5/12/89—published 5/31/89, effective 7/5/89]

[Filed emergency 12/2/93—published 12/22/93, effective 12/2/93]

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[Filed ARC 0268C (Notice ARC 0103C, IAB 4/18/12), IAB 8/8/12, effective 9/12/12]



CHAPTER 26  
WATER POLLUTION CONTROL WORKS AND  
DRINKING WATER FACILITIES FINANCING

**265—26.1(16) Statutory authority.** The authority to provide loans to eligible applicants to assist in financing drinking water and wastewater treatment facilities and water pollution control projects is provided by Iowa Code sections 16.131 through 16.133.

**265—26.2(16) Purpose.** The Iowa finance authority provides financing to carry out the functions of the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the Iowa SRF is administered by the Iowa department of natural resources in partnership with the Iowa finance authority.

[ARC 8457B, IAB 1/13/10, effective 2/17/10]

**265—26.3(16) Definitions.**

“*Authority*” or “*IFA*” means the Iowa finance authority.

“*Clean Water Act*” or “*CWA*” means the federal Water Pollution Control Act of 1972, as amended by the Water Quality Act of 1987.

“*Commission*” means the environmental protection commission of the Iowa department of natural resources.

“*Common ownership*” means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

“*Department*” or “*DNR*” means the Iowa department of natural resources.

“*Director*” means the director of the authority.

“*DWSRF*” means the drinking water state revolving fund.

“*Eligible costs*” means all costs related to the completion of a project as defined in the CWA and SDWA and 567—Chapters 40 and 90.

“*EPA*” means the United States Environmental Protection Agency.

“*Intended use plan*” or “*IUP*” means the program document identifying the intended uses of funds available for loans pursuant to the WPCSRF and the DWSRF.

“*Nonpoint source*” means any project described in Section 319 of the Clean Water Act.

“*Recipient*” means the entity receiving funds from the SRF.

“*Safe Drinking Water Act*” or “*SDWA*” means Title XIV of the federal Public Health Service Act, commonly known as the “Safe Drinking Water Act,” as amended by the Safe Drinking Water Amendments of 1996.

“*SRF*” means the state revolving fund.

“*WPCSRF*” means the water pollution control state revolving fund.

[ARC 8457B, IAB 1/13/10, effective 2/17/10]

**265—26.4(16) Project funding.**

**26.4(1) *Intended use plans/state project priority lists.*** The state project priority lists shall include projects eligible for SRF loans as provided in 567—Chapters 44 and 92. The authority will consider the following when determining whether to provide a loan to an eligible recipient:

- a. Recipient’s financial capability to repay the loan and to provide operation and maintenance, replacement reserves, and, if required, debt service reserves;
- b. Recipient’s statement of willingness to accept all loan terms and conditions;
- c. The priority of the project;
- d. Funds available; and
- e. The technical review and approval of the project by the department.

**26.4(2) *Phased or segmented projects.*** Loan funds for future portions of phased or segmented projects cannot be ensured, although subsequent segments of a project which has been awarded financial assistance will receive priority over other new projects. Loans made for separate phases or segments of a project will be administered separately.

**26.4(3) *Loan adjustments.*** Loan amounts may be adjusted to reflect eligible costs.

**26.4(4) *Recipient record keeping.*** The recipient shall maintain records that document all costs associated with the project. Moneys from the SRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform to generally accepted government accounting standards. The recipient shall agree to provide access to these records to the department, the authority, the state auditor, the state or EPA, and the Office of the Inspector General at the EPA. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

**26.4(5) *Site access.*** The recipient shall agree to provide the department and the department's agent access to the project site at all times to verify that the loan funds are being used for the intended purpose and that the construction work meets all applicable state and federal requirements. Recipients shall also agree to provide the department periodic access to the project site for the duration of the loan to ensure that the project is being operated and maintained as designed.

**26.4(6) *Cross-cutting laws.*** Other federal and state statutes and programs may affect an SRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements.

#### **265—26.5(16) WPCSRF/DWSRF infrastructure construction loans.**

**26.5(1) *Loan agreements.*** The authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the CWA/SDWA and applicable state rules for SRF funding. The loan shall be accompanied by an enforceability opinion in a form acceptable to the authority and, if applicable, a bond counsel opinion as to the status of interest on the obligation, in a form acceptable to the authority. A copy of the current form of the loan agreement shall be provided to the applicant upon request.

**26.5(2) *Loan rates and terms.*** Loan terms for point source projects shall include the following:

*a. Interest rates.* Loan interest rates shall be established in the IUP and shall be established by taking into account factors including, but not limited to, the following:

- (1) Interest rate cost of funds to the SRF;
- (2) Availability of other SRF funds;
- (3) Prevailing market interest rates of comparable non-SRF loans; and
- (4) Long-term SRF viability.

*b. Loan initiation fee.* The loan initiation fee shall be established in the IUP. The fee shall be payable on the closing date of the loan agreement.

*c. Annual loan servicing fee.* The annual loan servicing fee shall be established in the IUP.

*d. Revenue pledge.* The recipient shall establish sufficient revenue sources that are acceptable to the director for the repayment of the loan. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to at least 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year, provided, however, that, at the discretion of the director, the authority may allow other revenue sources and coverage of less than 110 percent as security. In case of loan default, the authority shall have authority to require revenue adjustment, through the manner described above, to collect delinquent loan payments.

*e. Security.* The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations. The dedicated source of repayment is expected to be the net revenues of the recipient's system and the loan is expected to be secured by a first lien on said net revenues. Loans secured by revenues of a system may rank on a parity basis with other outstanding obligations or, with the approval of the director, may be subordinate in right of payment to the recipient's

other outstanding revenue obligations. Loans may also be secured by a general obligation of the recipient through the provision for a levy of taxes to repay the loan.

*f. Construction payment schedules.* An estimated construction drawdown schedule provided by the recipient shall be part of the loan agreement.

**26.5(3) Loan commitments.** A loan agreement shall be a binding commitment of the recipient.

**26.5(4) Purpose of payments.** The recipient shall use the proceeds of the WPCSRF/DWSRF loan solely for the purpose of funding the approved project.

**26.5(5) Costs.** All eligible costs must be documented to the satisfaction of the authority and the department before proceeds of the loan will be disbursed.

**26.5(6) Loan amount and repayment period.** All loans shall be made contingent on the availability of funds, the maximum loan term will be that allowed by EPA, and repayment of the loan must begin no later than one year after the project is completed or by the date specified in the loan agreement.

**26.5(7) Prepayment.** The loan may be prepaid, in whole or in part, on any date with the prior written consent of the authority.

[ARC 8457B, IAB 1/13/10, effective 2/17/10; ARC 0245C, IAB 8/8/12, effective 7/12/12]

### **265—26.6(16) Planning and design loans.**

**26.6(1) Timing of loan.** Prior to a recipient's execution of a loan agreement for project construction, funds may be loaned to the recipient to pay for initial eligible costs, including the cost of facility planning and design engineering.

**26.6(2) Duration.** Planning and design loans may not have a duration of longer than three years from their date of execution, unless the director provides written consent to a longer term.

**26.6(3) Interest rate.** The interest rate will be that rate specified in the most recent IUP.

**26.6(4) Rollover to construction loan.** All funds borrowed by the recipient as a planning and design loan may be financed as a part of a construction loan agreement upon expiration of the term of the planning and design loan.

**26.6(5) Repayment.** If the recipient does not execute an SRF construction loan, the planning and design loan shall be paid in full at the end of the three-year term, unless the loan term is extended by written consent of the director.

[ARC 8079B, IAB 8/26/09, effective 8/7/09]

### **265—26.7(16) Disadvantaged community status.**

**26.7(1) Criteria for disadvantaged community status.** The authority, in conjunction with the department, may develop criteria to determine disadvantaged community status. Factors included in the criteria include, but are not limited to, the community's median household income and target user charges. Criteria to determine disadvantaged community status shall be established in the IUP.

**26.7(2) Interest rate.** Interest rates for disadvantaged communities shall be established in the IUP.  
[ARC 8457B, IAB 1/13/10, effective 2/17/10]

### **265—26.8(16) WPCSRF nonpoint source set-aside loan programs.**

**26.8(1) Nonpoint source loan assistance.** Loan assistance for nonpoint source projects shall be in the form of low-interest loans or through linked deposits or loan participations through participating lending institutions.

**26.8(2) Application for loan assistance.** Application for loan assistance may be made at any participating lending institution or submitted to the authority or the authority's agent, as applicable. A list of participating lending institutions will be made available by the authority, financial agent or other entity that the authority may use to administer this program. Application for loan assistance shall be made on forms provided by the authority or its agent.

**26.8(3) Project approval.** Each project must be approved by the appropriate environmental or conservation agency as determined by the department.

**26.8(4) Loan approval.** For linked deposit programs, the participating lending institution shall, upon receipt of a completed loan application form, either approve or deny the loan in accordance with the program requirements. If the loan is approved, the lending institution shall notify the authority or its agent

in order to reserve funds in that amount to ensure that funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant, clearly stating the reasons for the loan denial. For low-interest loans with the authority, the authority, or its agent, shall notify the applicant of the loan approval or denial.

**26.8(5) Availability of funds.** Before acting on a loan application, the lending institution shall ensure that adequate funds are available for the project and that the completed project has been inspected and approved by the appropriate environmental or conservation agency as determined by the department.

**26.8(6) Property transfer.** In the event of property transfer from the applicant to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be immediately due in full.

**26.8(7) Loan amount and period.** All loans shall be made contingent on the availability of funds in the applicable fund or set-aside program as indicated in the IUP. The minimum and maximum loan amounts that will be considered are dependent on project type and are set forth as follows:

Type of Project	Type of Assistance	Minimum Loan Amount	Maximum Outstanding Balance	Maximum Loan Term	Project Approval Agency
General Nonpoint Source	Low-interest loans, Linked deposit or Loan participations	\$5,000	No maximum	20 years	DNR
Local Water Protection	Linked deposit	\$5,000	\$500,000 per common ownership	10 years	Division of Soil Conservation
Livestock Water Quality Facilities	Linked deposit	\$10,000	\$500,000 per common ownership	15 years*	Division of Soil Conservation
Onsite Wastewater Systems Assistance	Linked deposit	\$2,000	No maximum	10 years	County

\*If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed 5 years.

**26.8(8) Prepayment.** For direct loans, prepayment of the loan principal in whole or in part shall be allowed without penalty.

**26.8(9) Loan adjustments.** If the eligible costs exceed the loan amount, the recipient may request an increase in the loan amount. The lending institution is authorized to execute a loan for a principal amount of up to 10 percent above the amount of the loan application if the eligible costs exceed the application amount. To determine the appropriate action, the authority will evaluate the request by considering available moneys in the fund as well as the financial risk. Should the eligible costs be less than the loan amount, the loan shall be appropriately adjusted.

**26.8(10) Disbursement of funds.** Funds shall be disbursed in accordance with the loan agreement. The loan agreement may allow for periodic disbursement of funds.

[ARC 8457B, IAB 1/13/10, effective 2/17/10; ARC 8906B, IAB 6/30/10, effective 6/10/10]

## 265—26.9(16) Termination and rectification of disputes.

**26.9(1) Termination.** The authority shall have the right to terminate any loan if a term of the agreement has been violated. Loans are subject to termination if construction has not begun within one year of the execution of a loan agreement. The director will establish a repayment schedule for funds already loaned to the recipient. Every termination must be in writing.

**26.9(2) Rectification and disputes.** Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority, the authority's agent, or the participating lending institution to withhold loan disbursements. The recipient is responsible for

ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the loan funds can be released. A recipient that disagrees with the director's withholding of loan funds may request a formal review of the action. The recipient must submit to the director a written request for a formal review of the action within 30 days of receiving notice that loan disbursements will not be released.

These rules are intended to implement Iowa Code sections 16.5(17) and 16.133.

[Filed 1/13/06, Notice 9/28/05—published 2/1/06, effective 3/8/06]

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[Filed Emergency ARC 0245C, IAB 8/8/12, effective 7/12/12]



CHAPTER 36  
GOVERNOR TERRY E. BRANSTAD  
IOWA STATE FAIR SCHOLARSHIP PROGRAM

**283—36.1(77GA,ch1215) Governor Terry E. Branstad Iowa state fair scholarship program.** The Governor Terry E. Branstad Iowa state fair scholarship program is a privately funded scholarship program for Iowa residents who actively participate in the Iowa state fair and enroll as undergraduate students in eligible Iowa institutions.

**36.1(1) Definitions.** As used in this chapter:

*“Eligible institution”* means an institution of higher learning located in Iowa under the control of the state board of regents, a North Central Association of Colleges and Schools (NCA) accredited independent institution as defined in Iowa Code section 261.9, or a state-supported community college.

*“Iowa resident student”* means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

*“Located in Iowa”* means a college or university accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, that has made a substantial investment in a permanent Iowa campus and staff, and that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.

**36.1(2) Eligibility for scholarship.**

a. An applicant must be an Iowa resident who has graduated from an accredited secondary school in Iowa.

b. An applicant for assistance under this program must enroll at an eligible institution.

c. An applicant must release test scores, rank in class, grade point average, and need analysis information to the commission on forms specified by the commission, by the deadline date determined by the commission. In addition, each applicant must provide the following information, as stated in the application instructions: essay, description of state fair participation, description of school and community activities, description of community services, and references.

**36.1(3) Selection.** A panel of judges representing the following agencies will choose recipients: governor’s staff, the Iowa state fair board, the Iowa department of education, the Iowa department of agriculture and land stewardship, and the Iowa college student aid commission.

**36.1(4) Monetary award.**

a. Up to four awards ranging from \$500 to \$1,000 will be awarded annually. No student shall receive more than the student’s established financial need.

b. A scholarship of up to \$2,000 will be awarded each year to the Iowa state fair queen.

c. The Governor Terry E. Branstad Iowa state fair scholarship fund will be established in the office of the state treasurer.

**36.1(5) Restrictions.** An applicant who is in default on a Stafford Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for this scholarship. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5, Iowa Administrative Code.

This rule is intended to implement Iowa Code section 261.24.

[ARC 0246C, IAB 8/8/12, effective 7/13/12]

[Filed 11/25/98, Notice 8/26/98—published 12/16/98, effective 1/20/99]

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[Filed Emergency After Notice ARC 0246C (Notice ARC 0089C, IAB 4/18/12), IAB 8/8/12, effective 7/13/12]



CHAPTER 156  
PAYMENTS FOR FOSTER CARE

[Prior to 7/1/83, Social Services[770] Ch 137]  
[Previously appeared as Ch 137—renumbered IAB 2/29/84]  
[Prior to 2/11/87, Human Services[498]]

**441—156.1(234) Definitions.**

“*Child welfare services*” means age-appropriate activities to maintain a child’s connection to the child’s family and community, to promote reunification or other permanent placement, and to facilitate a child’s transition to adulthood.

“*Cost of foster care*” means the maintenance and supervision costs of foster family care, the maintenance costs and child welfare service costs of group care, and the maintenance and service costs of supervised apartment living and shelter care. The cost for foster family care supervision and for supervised apartment living services provided directly by the department caseworker shall be \$250 per month. When using this average monthly charge results in unearned income or parental liability being collected in excess of the cost of foster care, the excess funds shall be placed in the child’s escrow account. The cost for supervised apartment living services purchased from a private provider shall be the actual costs paid by the department.

“*Department*” means the Iowa department of human services.

“*Director*” means the director of the child support recovery unit of the department or the director’s designee.

“*Earned income*” means income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from job corps or profit from self-employment.

“*Escrow account*” means an interest bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

“*Family foster care supervision*” means the support, assistance, and oversight provided by department caseworkers to children in family foster care and directed toward achievement of the child’s permanency plan goals.

“*Foster care*” means substitute care furnished on a 24-hour-a-day basis to an eligible child in a licensed or approved facility by a person or agency other than the child’s parent or guardian but does not include care provided in a family home through an informal arrangement for a period of 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision and health care.

“*Foster family care*” means foster care provided by a foster family licensed by the department according to 441—Chapter 113 or licensed or approved by the placing state. The care includes the provision of food, lodging, clothing, transportation, recreation, and training that is appropriate for the child’s age and mental and physical capacity.

“*Group care maintenance*” means food, clothing, shelter, school supplies, personal incidentals, daily care, general parenting, discipline, and supervision of children to ensure their well-being and safety, and administration of maintenance items provided in a group care facility.

“*Income*” means earned and unearned income.

“*Mental health professional*” means a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and

2. Holds a current Iowa license when required by the Iowa professional licensure laws (such as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker); and

3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and service needs and in providing mental health services.

“*Mental retardation professional*” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the

educational requirements for the profession, as required in the state of Iowa, and has one year of experience working with persons with mental retardation.

“*Parent*” means the biological or adoptive parent of the child.

“*Parental liability*” means a parent’s liability for the support of a child during the period of foster care placement. Liability shall be determined pursuant to 441—Chapter 99, Division I.

“*Physician*” means a licensed medical or osteopathic doctor as defined in rule 441—77.1(249A).

“*Service area manager*” means the department employee or designee responsible for managing department offices within a department service area and for implementing policies and procedures of the department.

“*Special needs child*” means a child with needs for emotional care, behavioral care, or physical and personal care which require additional skill, knowledge, or responsibility on the part of the foster parents, as measured by Form 470-4401, Foster Child Behavioral Assessment. See subrule 156.6(4).

“*Unearned income*” means any income which is not earned income and includes supplemental security income (SSI) and other funds available to a child residing in a foster care placement.

This rule is intended to implement Iowa Code section 234.39.

[ARC 7606B, IAB 3/11/09, effective 5/1/09; ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 8010B, IAB 7/29/09, effective 10/1/09]

**441—156.2(234) Foster care recovery.** The department shall recover the cost of foster care provided by the department pursuant to the rules in this chapter and the rules in 441—Chapter 99, Division I, which establishes policies and procedures for the computation and collection of parental liability.

**156.2(1)** Funds shall be applied to the cost of foster care in the following order and each source exhausted before utilizing the next funding source:

- a. Unearned income of the child.
- b. Parental liability of the noncustodial parent.
- c. Parental liability of custodial parent(s).

**156.2(2)** The department shall serve as payee to receive the child’s unearned income. When a parent or guardian is not available or is unwilling to do so, the department shall be responsible for applying for benefits on behalf of a child placed in the care of the department. Until the department becomes payee, the payee shall forward benefits to the department. For voluntary foster care placements of children aged 18 and over, the child is the payee for the unearned income. The child shall forward these benefits, up to the actual cost of foster care, to the department.

**156.2(3)** The custodial parent shall assign child support payments to the department.

**156.2(4)** Unearned income of a child and parental liability of the noncustodial parent shall be placed in an account from whence it shall be applied toward the cost of the child’s current foster care and the remainder placed in an escrow account.

**156.2(5)** When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the foster care payments and not prohibited by the source of the funds.

**156.2(6)** When the child leaves foster care, funds in escrow shall be paid to the custodial parent(s) or guardian or to the child when the child has attained the age of majority, unless a guardian has been appointed.

**156.2(7)** When a child who has unearned income returns home after the first day of a month, the remaining portion of the unearned income (based on the number of days in the particular month) shall be made available to the child and the child’s parents, guardian or custodian, if the child is eligible for the unearned income while in the home of a parent, guardian or custodian.

This rule is intended to implement Iowa Code section 234.39.

**441—156.3(252C) Computation and assessment of parental liability.** Rescinded IAB 3/13/96, effective 5/1/96.

**441—156.4(252C) Redetermination of liability.** Rescinded IAB 3/13/96, effective 5/1/96.

**441—156.5(252C) Voluntary payment.** Rescinded IAB 3/13/96, effective 5/1/96.

**441—156.6(234) Rate of maintenance payment for foster family care.**

**156.6(1) Basic rate.** Effective July 1, 2012, a monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

<u>Age of child</u>	<u>Daily rate</u>
0 through 5	\$15.98
6 through 11	\$16.62
12 through 15	\$18.19
16 or over	\$18.43

**156.6(2) Out-of-state rate.** A monthly payment for care in a foster family home licensed or approved in another state shall be made to the foster family based on the rate schedule in effect in Iowa, except that the service area manager or designee may authorize a payment to the foster family at the rate in effect in the other state if the child's family lives in that state and the goal is to reunite the child with the family.

**156.6(3) Mother and child in foster care.** When the child in foster care is a mother whose young child is in placement with her, the rate paid to the foster family shall be based on the daily rate for the mother according to the rate schedule in subrules 156.6(1) and 156.6(4) and for the child according to the rate schedule in subrule 156.6(1). The foster parents shall provide a portion of the young child's rate to the mother to meet the partial maintenance needs of the young child as defined in the case permanency plan.

**156.6(4) Difficulty of care payment.**

*a.* For placements made before January 1, 2007, when foster parents provide care to a special needs child, the foster family shall be paid the basic maintenance rate plus \$5 per day for extra expenses associated with the child's special needs. This rate shall continue for the duration of the placement.

*b.* When a foster family provides care to a sibling group of three or more children, an additional payment of \$1 per day per child may be authorized for each nonspecial needs child in the sibling group.

*c.* When the foster family's responsibilities in the case permanency plan include providing transportation related to family or preplacement visits outside the community in which the foster family lives, the department worker may authorize an additional maintenance payment of \$1 per day. Expenses over the monthly amount may be reimbursed with prior approval by the worker. Eligible expenses shall include the actual cost of the most reasonable passenger fare or gas.

*d.* Effective January 1, 2007, when a foster family provides care to a child who was receiving behavioral management services for children in therapeutic foster care in that placement as of October 31, 2006, the foster family shall be paid the basic maintenance rate plus \$15 per day for that child. This rate shall continue for the duration of the placement.

*e.* Effective January 1, 2007, when a service area manager determines that as of October 31, 2006, a foster family was providing care for a child comparable to behavioral management services for children in therapeutic foster care, except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or mental retardation professional, the foster family shall be paid the basic maintenance rate plus \$15 per day for that child. This rate shall continue for the duration of the placement.

*f.* For placements made on or after January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) to meet the child's special needs as identified by the child's score on Form 470-4401, Foster Child Behavioral Assessment. The placement worker shall complete Form 470-4401 within 30 days of the child's initial entry into foster care.

(1) Additional maintenance payments made under this paragraph shall begin no earlier than the first day of the month following the month in which Form 470-4401 is completed and shall be awarded as follows:

1. Behavioral needs rated at level 1 qualify for a payment of \$4.81 per day.
2. Behavioral needs rated at level 2 qualify for a payment of \$9.62 per day.
3. Behavioral needs rated at level 3 qualify for a payment of \$14.44 per day.

(2) The department shall review the child's need for this difficulty of care maintenance payment using Form 470-4401:

1. Whenever the child's behavior changes significantly;
2. When the child's placement changes;
3. After termination of parental rights, in preparation for negotiating an adoption subsidy or pre-subsidy payment; and
4. Before a court hearing on guardianship subsidy.

g. All maintenance payments, including difficulty of care payments, shall be documented on Form 470-0716, Foster Family Placement Contract.

h. Rescinded IAB 1/3/07, effective 1/1/07.

**156.6(5) *Payment method.*** All foster family maintenance payments shall be made directly to the foster family.

**156.6(6) *Return of overpayments.*** When a foster family has received payments in excess of those allowed under this chapter, the department caseworker shall ask the foster family to return the overpayment. If the foster family is returning the overpayment to the department, the caseworker will note the monthly amount the foster family agrees to pay in the family's case file. The amount returned shall not be less than \$50 per month.

This rule is intended to implement Iowa Code section 234.38 and 2012 Iowa Acts, Senate File 2336, section 34.

[ARC 8010B, IAB 7/29/09, effective 10/1/09; ARC 8451B, IAB 1/13/10, effective 1/1/10; ARC 8653B, IAB 4/7/10, effective 5/12/10; ARC 8904B, IAB 6/30/10, effective 7/1/10; ARC 9778B, IAB 10/5/11, effective 11/9/11; ARC 0240C, IAB 8/8/12, effective 7/11/12]

**441—156.7(234) Purchase of family foster care services.** Rescinded IAB 5/6/09, effective 7/1/09.

**441—156.8(234) Additional payments.**

**156.8(1) *Clothing allowance.*** When, in the judgment of the worker, clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed \$237.50, to purchase clothing.

a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed \$190 for family foster care and \$100 for all other levels when:

- (1) The child needs clothing to replace lost clothing or because of growth or weight change, and
- (2) The child does not have escrow funds to cover the cost.

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the worker within 30 days of purchase for auditing purposes, using Form 470-1952, Foster Care Clothing Allowance.

**156.8(2) *Supervised apartment living.*** Effective July 1, 2011, when a child is initially placed in supervised apartment living, the service area manager or designee may authorize an allowance not to exceed \$600 if the child does not have sufficient resources to cover initial costs.

**156.8(3) *Medical care.*** When a child in foster care needs medical care or examinations which are not covered by the Medicaid program and no other source of payment is available, the cost may be paid from foster care funds with the approval of the service area manager or designee. Eligible costs shall include emergency room care, medical treatment by out-of-state providers who refuse to participate in the Iowa Medicaid program, and excessive expenses for nonprescription drugs or supplies. Requests for payment for out-of-state medical treatment and for nonprescription drugs or supplies shall be approved prior to the care being provided or the drugs or supplies purchased. Claims shall be submitted to the department on Form GAX, General Accounting Expenditure, within 90 days after the service is provided. The rate of payment shall be the same as allowed under the Iowa Medicaid program.

**156.8(4) *Transportation for medical care.*** When a child in foster family care has expenses for transportation to receive medical care which cannot be covered by the Medicaid program, the expenses may be paid from foster care funds, with the approval of the service area manager. The claim for all the expenses shall be submitted to the department on Form GAX, General Accounting Expenditure, within 90 days after the trip. This payment shall not duplicate or supplement payment through the Medicaid

program. The expenses may include the actual cost of meals, parking, child care, lodging, passenger fare, or mileage at the rate granted state employees.

**156.8(5) *Funeral expense.*** When a child under the guardianship of the department dies, the department will pay funeral expenses not covered by the child's resources, insurance or other death benefits, the child's legal parents, or the child's county of legal settlement, not to exceed \$650.

The total cost of the funeral and the goods and services included in the total cost shall be the same as defined in rule 441—56.3(239,249).

The claim shall be submitted by the funeral director to the department on Form GAX, General Accounting Expenditure, and shall be approved by the service area manager. Claims shall be submitted within 90 days after the child's death.

**156.8(6) *School fees.*** Payment for required school fees of a child in foster family care or supervised apartment living that exceed \$5 may be authorized by the department worker in an amount not to exceed \$50 per calendar year if the child does not have sufficient escrow funds to cover the cost. Required school fees shall include:

- a. Fees required for participation in school or extracurricular activities; and
- b. Fees related to enrolling a child in preschool when a mental health professional or a mental retardation professional has recommended school attendance.

**156.8(7) *Respite care.*** The service area manager or designee may authorize respite for a child in family foster care for up to 24 days per calendar year per placement. Respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be the rate authorized under rule 441—156.6(234) to meet the needs of the child.

**156.8(8) *Tangible goods, child care, and ancillary services.*** To the extent that a foster child's escrow funds are not available, the service area manager or designee may authorize reimbursement to foster parents for the following:

- a. Tangible goods for a special needs child including, but not limited to, building modifications, medical equipment not covered by Medicaid, specialized educational materials not covered by educational funds, and communication devices not covered by Medicaid.

- b. Child care services when the foster parents are working, the child is not in school, and the provision of child care is identified in the child's case permanency plan.

- (1) Child care services shall be provided by a licensed foster parent or a licensed or registered child care provider when available.

- (2) When foster parents elect to become child care providers, they shall be registered pursuant to 441—Chapter 110.

- c. Ancillary services needed by the foster parent to meet the needs of a special needs child including, but not limited to, specialized classes when directed by the case permanency plan.

- d. Ancillary services needed by the special needs child including, but not limited to, recreation fees, in-home tutoring and specialized classes not covered by education funds.

- e. Requests for tangible goods, child care, and ancillary services shall be submitted to the service area manager for approval on Form 470-3056, Request for Tangible Goods, Child Care, and Ancillary Services. Payment rates for tangible goods and ancillary services shall be comparable to prevailing community standards. Payment rates for child care shall be established pursuant to 441—subrule 170.4(7).

- f. Prior payment authorization shall be issued by the service area manager before tangible goods, child care, and ancillary services are purchased by or for foster parents.

This rule is intended to implement Iowa Code section 234.35.

[ARC 7606B, IAB 3/11/09, effective 5/1/09; ARC 8010B, IAB 7/29/09, effective 10/1/09; ARC 8451B, IAB 1/13/10, effective 1/1/10; ARC 8653B, IAB 4/7/10, effective 5/12/10; ARC 9778B, IAB 10/5/11, effective 11/9/11]

#### **441—156.9(234) Rate of payment for foster group care.**

**156.9(1) *In-state reimbursement.*** Effective November 1, 2006, public and private foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and child welfare services in accordance with the rate-setting methodology in this subrule.

a. A provider of group care services shall maintain at least the minimum staff-to-child ratio during prime programming time as established in the contract. Staff shall meet minimum qualifications as established in 441—Chapters 114 and 115. The actual number and qualifications of the staff will vary depending on the needs of the children.

b. Additional payment for group care maintenance may be authorized if a facility provides care for a mother and her young child according to subrule 156.9(4).

c. Reimbursement rates shall be adjusted based on the provider's rate in effect on October 31, 2006, to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services. The reimbursement rate shall be calculated as follows:

(1) Step 1. Annualize the provider's combined daily reimbursement rate for maintenance and service in effect on October 31, 2006, by multiplying that combined rate by 365 days.

(2) Step 2. Annualize the provider's remedial services reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.

(3) Step 3. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.

(4) Step 4. Add the amounts determined in Steps 2 and 3.

(5) Step 5. Subtract the amount determined in Step 4 from the amount determined in Step 1.

(6) Step 6. Divide the amount determined in Step 5 by 365 to compute the new combined maintenance and child welfare service per diem rate.

(7) Step 7. Determine the maintenance portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 85.62 percent.

(8) Step 8. Determine the child welfare service portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 14.38 percent.

EXAMPLE: Provider A has the following rates as of October 31, 2006:

- A combined daily maintenance and service rate of \$121.45;
- A Medicaid rate for service code 96153 of \$5.10 per 15 minutes, or \$20.40 per hour;
- A Medicaid rate for service code 96152 of \$19.92 per 15 minutes, or \$79.68 per hour.

Step 1.  $\$121.45 \times 365 \text{ days} = \$44,329.25$

Step 2.  $\$20.40 \times 365 \text{ days} = \$7,446.00$

Step 3.  $\$79.68 \times 52 \text{ weeks} = \$4,143.36$

Step 4.  $\$7,446.00 + \$4,143.36 = \$11,589.36$

Step 5.  $\$44,329.25 - \$11,589.36 = \$32,739.89$

Step 6.  $\$32,739.89 \div 365 \text{ days} = \$89.70$

Step 7.  $\$89.70 \times 0.8562 = \$76.80$  maintenance rate

Step 8.  $\$89.70 \times 0.1438 = \$12.90$  child welfare service rate

Provider A's rates are \$76.80 for maintenance and \$12.90 for child welfare services.

d. No less than annually, the department shall redetermine the allocation of the combined child welfare service per diem rate between the maintenance and service portions based on review of verified remedial services cost reports for foster group care services providers. If the new allocation differs from the current allocation, the department shall:

(1) Reallocate the combined child welfare service per diem for foster group care between the maintenance and service portions of the combined rate; and

(2) Notify all providers of any change in the allocation between maintenance and service rates and the effective date.

**156.9(2) Out-of-state group care payment rate.** The payment rate for maintenance and child welfare services provided by public or private agency group care licensed or approved in another state shall be established using the same rate-setting methodology as that in subrule 156.9(1), unless the director determines that appropriate care is not available within the state pursuant to the following criteria and procedures.

*a. Criteria.* When determining whether appropriate care is available within the state, the director shall consider each of the following:

- (1) Whether the child's treatment needs are exceptional.
- (2) Whether appropriate in-state alternatives are available.
- (3) Whether an appropriate in-state alternative could be developed by using juvenile court-ordered service fund or wrap-around funds.
- (4) Whether the placement and additional payment are expected to be time-limited with anticipated outcomes identified.
- (5) If the placement has been approved by the service area manager or chief juvenile court officer.

*b. Procedure.* The service area manager or chief juvenile court officer shall submit the request for director's exception to the Appeals Section, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. This request shall be made in advance of placing the child and should allow a minimum of two weeks for a response. The request shall contain documentation addressing the criteria for director's approval listed in 156.9(2) "a."

*c. Appeals.* The decision of the director regarding approval of an exception to the rate determination in rule 441—152.3(234) is not appealable.

**156.9(3) Supplemental payments for in-state facilities.** Rescinded IAB 9/1/93, effective 8/12/93.

**156.9(4) Mother-young child rate.** When a group foster care facility provides foster care for a mother and her young child, the maintenance rate for the mother shall include an additional amount to cover the actual and allowable maintenance needs of the young child. No additional amount shall be allowed for service needs of the child.

*a.* The rate shall be determined according to the policies in rule 441—152.3(234) and added to the maintenance rate for the mother. The young child portion of the maintenance rate shall be limited to the costs associated with food, clothing, shelter, personal incidentals, and supervision for each young child and shall not exceed the maintenance rate for the mother. Costs for day care shall not be included in the maintenance rate.

*b.* Rescinded IAB 6/8/94, effective 6/1/94.

*c.* Unless the court has transferred custody from the mother, the mother shall have primary responsibility for providing supervision and parenting for the young child. The facility shall provide services to the mother to assist her to meet her parenting responsibilities and shall monitor her care of the young child.

*d.* The facility shall provide services to the mother to assist her to:

- (1) Obtain a high school diploma or general education equivalent (GED).
- (2) Develop preemployment skills.
- (3) Establish paternity for her young child whenever appropriate.
- (4) Obtain child support for the young child whenever paternity is established.

*e.* The agency shall maintain information in the mother's file on:

(1) The involvement of the mother's parents or of other adults.  
(2) The involvement of the father of the minor's child, including steps taken to establish paternity, if appropriate.

(3) A decision of the minor to keep and raise her young child.

(4) Plan for the minor's completion of high school or a GED program.

(5) The parenting skills of the minor parent.

(6) Child care and transportation plans for education, training or employment.

(7) Ongoing health care of the mother and child.

(8) Other services as needed to address personal or family problems or to facilitate the personal growth and development toward economic self-sufficiency of the minor parent and young child.

*f.* The agency shall designate \$35 of the young child rate as an allowance to the mother to meet the maintenance needs of her young child, as defined in her case permanency plan.

This rule is intended to implement Iowa Code sections 234.6 and 234.38.

[ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 8715B, IAB 5/5/10, effective 7/1/10; ARC 9778B, IAB 10/5/11, effective 11/9/11]

**441—156.10(234) Payment for reserve bed days.**

**156.10(1) Group care facilities.** The department shall provide payment for group care maintenance and child welfare services according to the following policies.

*a. Family visits.* Reserve bed payment shall be made for days a child is absent from the facility for family visits when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The facility shall notify the worker of each visit and its planned length prior to the visit.
- (3) The intent of the department and the facility shall be for the child to return to the facility after the visit.
- (4) Staff from the facility shall be available to provide support to the child and family during the visit.
- (5) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (6) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (7) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(8) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

(9) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

*b. Hospitalization.* Reserve bed payment shall be made for days a child is absent from the facility for hospitalization when the absence is in accord with the following:

- (1) The facility shall contact the worker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.
- (2) The intent of the department and the facility shall be for the child to return to the facility after the hospitalization.
- (3) Staff from the facility shall be available to provide support to the child and family during the hospitalization.
- (4) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (5) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (6) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(7) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

(8) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

*c. Runaways.* Reserve bed payment shall be made for days a child is absent from the facility after the child has run away when the absence is in accord with the following:

- (1) The facility shall notify the worker within 24 hours after the child runs away.
- (2) The intent of the department and the facility shall be for the child to return to the facility once the child is found.
- (3) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (4) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(6) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

(7) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

*d. Preplacement visits.* Reserve bed payment shall be made when a child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The intent of the department and the facility shall be for the child to return to the facility.
- (3) Staff from the facility shall be available to provide support to the child and provider during the visit.
- (4) Payment shall be canceled and payment returned if the facility refuses to accept the child back.
- (5) Payment shall not exceed two consecutive days.
- (6) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

**156.10(2) Foster family care.**

*a. Family visits.* Reserve bed payment shall be made for days a foster child is absent from the foster family home for family visits when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The intent of the department and the foster family shall be for the child to return to the foster family home after the visit.
- (3) Payment shall be canceled and payments returned if the foster family refuses to accept the child back.
- (4) If the department and the foster family agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(6) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

*b. Hospitalization.* Reserve bed payment shall be made for days a foster child is absent from the foster family home for hospitalization when the absence is in accord with the following:

- (1) The intent of the department and the foster family shall be for the child to return to the foster family home after the hospitalization.
- (2) Payment shall be canceled and payments returned if the foster family refuses to accept the child back.
- (3) If the department and the foster family agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (4) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (5) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

*c. Runaways.* Reserve bed payment shall be made for days a foster child is absent from the foster family home after the child has run away when the absence is in accord with the following:

- (1) The foster family shall notify the worker within 24 hours after the child runs away.
- (2) The intent of the department and the foster family shall be for the child to return to the foster family home once the child is found.
- (3) Payment shall be canceled and payments returned if the foster family refuses to accept the child back.
- (4) If the department and the foster family agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (6) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.

*d. Preplacement visits.* Reserve bed payment shall be made when a foster child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The intent of the department and the foster family home shall be for the child to return to the foster family home.
- (3) Payment shall be canceled and payment returned if the foster family home refuses to accept the child back.
- (4) Payment shall not exceed two consecutive days.

**156.10(3) Shelter care facilities.**

*a. Hospitalization.* Reserve bed payment shall be made for days a child is absent from the facility for hospitalization when the absence is in accord with the following:

- (1) The facility shall contact the worker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.
- (2) The intent of the department and the facility shall be for the child to return to the facility after the hospitalization.
- (3) Staff from the facility shall be available to provide support to the child and family during the hospitalization.
- (4) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (5) If the department and the facility agree that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
- (6) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.
- (7) Payment shall not exceed 14 consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 30 consecutive days.
- (8) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

*b. Preplacement visits.* Reserve bed payment shall be made when a child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:

- (1) The visits shall be consistent with the child's case permanency plan.
- (2) The intent of the department and the facility shall be for the child to return to the facility.
- (3) Staff from the facility shall be available to provide support to the child and provider during the visit.
- (4) Payment shall be canceled and payment returned if the facility refuses to accept the child back.
- (5) Payment shall not exceed two consecutive days.
- (6) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

This rule is intended to implement Iowa Code sections 234.6 and 234.35.  
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

**441—156.11(234) Emergency care.**

**156.11(1) and 156.11(2)** Rescinded IAB 3/11/09, effective 5/1/09.

**156.11(3) Shelter care payment.** Public and private juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the rate-setting methodology in 441—paragraph 150.3(5)“p.”

*a.* Facilities shall bill for actual units of service provided in accordance with 441—subrule 150.3(8). In addition, facilities may be guaranteed a minimum level of payment to the extent determined by the department through a request-for-proposal process.

- (1) Guaranteed payment shall be calculated monthly.
- (2) The guaranteed level of payment shall be calculated by multiplying the number of beds for which payment is guaranteed by the number of days in the month.

(3) When the actual unit billings for a facility do not equal the guaranteed level of payment for the month, the facility may submit a supplemental billing for the deficiency.

(4) The amount of the supplemental billing shall be determined by multiplying the facility's unit cost for shelter care by the number of units below the guaranteed level for the month for which the facility was not reimbursed.

*b.* The total reimbursement to the agency shall not exceed the agency's allowable costs as defined in 441—subrule 150.3(5). Agencies shall refund any payments which have been made in excess of the agencies' allowable costs.

*c.* Shelter contracts for the state fiscal year beginning July 1, 2007, shall provide for the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year.

This rule is intended to implement Iowa Code section 234.35.  
[ARC 7606B, IAB 3/11/09, effective 5/1/09]

**441—156.12(234) Supervised apartment living.**

**156.12(1) Maintenance.** Effective July 1, 2011, when a child at least aged 16½ but under the age of 20 is living in a supervised apartment living situation, the monthly maintenance payment for the child shall be \$750. This payment may be paid to the child or another payee, other than a department employee, for the child's living expenses.

**156.12(2) Service.** When services for a youth in supervised apartment living are purchased, the service components and number of hours purchased shall be specified by the service worker in the youth's case permanency plan.

This rule is intended to implement Iowa Code section 234.35 and 2011 Iowa Acts, House File 649, section 28(4).

[ARC 8451B, IAB 1/13/10, effective 1/1/10; ARC 8653B, IAB 4/7/10, effective 5/12/10; ARC 9778B, IAB 10/5/11, effective 11/9/11]

**441—156.13(234) Excessive rates.** Rescinded IAB 6/9/93, effective 8/1/93.

**441—156.14(234,252C) Voluntary placements.** When placement is made on a voluntary basis, the parent or guardian shall complete and sign Form 470-0715, Voluntary Placement Agreement.

**441—156.15(234) Child's earnings.** Earned income of a child who is not in a supervised apartment living arrangement and who is a full-time student or engaged in an educational or training program shall be reported to the department and its use shall be a part of a plan for service, but the income shall not be used towards the cost of the child's care as established by the department. When the earned income of children in supervised apartment living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.

**441—156.16(234) Trust funds and investments.**

**156.16(1)** When the child is a beneficiary of a trust and the proceeds therefrom are not currently available, or are not sufficient to meet the child's needs, the worker shall assist the child in having a petition presented to the court requesting release of funds to help meet current requirements. When the child and responsible adult cooperate in necessary action to obtain a ruling of the court, income shall not be considered available until the decision of the court has been rendered and implemented. When the child and responsible adult do not cooperate in the action necessary to obtain a ruling of the court, the trust fund or investments shall be considered as available to meet the child's needs immediately. When the child or responsible adult does not cooperate within 90 days in making the income available the maintenance payment shall be terminated.

**156.16(2)** The Iowa department of human services shall be payee for income from any trust funds or investments unless limited by the trust.

**156.16(3)** Savings accounts from any income and proceeds from the liquidation of securities shall be placed in the child's account maintained by the department and any amount in excess of \$1,500 shall be applied towards cost of the child's maintenance.

This rule is intended to implement Iowa Code section 234.39.

**441—156.17(234) Preadoptive homes.** Payment for a foster child placed in a preadoptive home shall be limited to the amount negotiated pursuant to rule 441—201.5(600) and shall not exceed the foster care maintenance amount paid in family foster care.

This rule is intended to implement Iowa Code section 234.38.  
[ARC 8010B, IAB 7/29/09, effective 10/1/09]

**441—156.18(237) Foster parent training expenses.** Rescinded IAB 7/29/09, effective 10/1/09.

**441—156.19(237) Rate of payment for care in a residential care facility.** When a child is receiving group care maintenance and child welfare services in a licensed residential care facility and is not eligible for supplemental security income or state supplementary assistance, the department will pay for the group care maintenance and child welfare services in accordance with subrule 156.9(1). When a child receives group care maintenance and child welfare services in a licensed residential care facility and is eligible for supplemental security income or state supplementary assistance, the department will pay for child welfare services in accordance with subrule 156.9(1).

This rule is intended to implement Iowa Code section 237.1(3) "e."

**441—156.20(234) Eligibility for foster care payment.**

**156.20(1) Client eligibility.** Foster care payment shall be limited to the following populations.

a. Youth under the age of 18 shall be eligible based on legal status, subject to certain limitations.

(1) Legal status. The youth's placement shall be based on one of the following legal statuses:

1. The court has ordered foster care placement pursuant to Iowa Code section 232.52, subsection 2, paragraph "d," Iowa Code section 232.102, subsection 1, Iowa Code section 232.117, or Iowa Code section 232.182, subsection 5.

2. The child is placed in shelter care pursuant to Iowa Code section 232.20, subsection 1, or Iowa Code section 232.21.

3. The department has agreed to provide foster care pursuant to rule 441—202.3(234).

(2) Limitations. Department payment for group care shall be limited to placements which have been authorized by the department and which conform to the service area group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2).

b. Youth aged 18 and older who meet the definition of child in rule 441—202.1(234) shall be eligible based on age, a voluntary placement agreement pursuant to 441—subrule 202.3(3), and type of placement.

(1) Except as provided in subparagraph 156.20(1) "b"(3), payment for a child who is 18 years of age shall be limited to family foster care or supervised apartment living.

(2) Except as provided in subparagraph 156.20(1) "b"(3), payment for a child who is 19 years of age shall be limited to supervised apartment living.

(3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors. The service area manager or designee shall grant an exception for other children when the child meets all of the following criteria. The child's eligibility for the exception shall be documented in the case record.

1. The child does not have mental retardation. Funding for services for persons with mental retardation is the responsibility of the county or state pursuant to Iowa Code section 222.60.

2. The child is at imminent risk of becoming homeless or of failing to graduate from high school or obtain a general equivalency diploma. "At imminent risk of becoming homeless" shall mean that a less restrictive living arrangement is not available.

3. The placement is in the child's best interests.

4. Funds are available in the service area's allocation. When the service area manager has approved payment for foster care pursuant to this subparagraph, funds which may be necessary to provide payment for the time period of the exception, not to exceed the current fiscal year, shall be considered encumbered and no longer available. Each service area's funding allocation shall be based on the service area's portion of the total number of children in foster care on March 31 preceding the beginning of the fiscal year, who would no longer be eligible for foster care during the fiscal year due to age, excluding unaccompanied refugee minors.

c. A young mother shall be eligible for the extra payment for her young child living with her in care as set forth in subrule 156.6(4), paragraph "a," and subrule 156.9(4) if all of the following apply:

- (1) The mother is placed in foster care.
- (2) The mother's custodian determines, as documented in the mother's case permanency plan, that it is in her best interest and the best interest of the young child that the child remain with her.
- (3) A placement is available.
- (4) The mother agrees to refund to the department any child support payments she receives on behalf of the child and to allow the department to be made payee for any other unearned income for the child.

**156.20(2) Provider eligibility for payment.**

a. Providers of shelter care services and supervised apartment living services shall have a purchase of service contract under 441—Chapter 150 in force.

b. Providers of group care services shall have a foster group care services contract under 441—Chapter 152 in force.

This rule is intended to implement Iowa Code sections 232.143, 234.35 and 234.38.  
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CHAPTER 33  
SPECIAL REGULATIONS AND CONSTRUCTION PERMIT REQUIREMENTS  
FOR MAJOR STATIONARY SOURCES—PREVENTION OF SIGNIFICANT  
DETERIORATION (PSD) OF AIR QUALITY

**567—33.1(455B) Purpose.** This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22, including requirements for Title V operating permits.  
[ARC 9906B, IAB 12/14/11, effective 11/16/11]

**567—33.2(455B)** Reserved.

**567—33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).**

**33.3(1) Definitions.** Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule, the definitions herein shall apply, rather than the definitions contained in 40 CFR 52.21 and 51.166, except for the PAL program definitions referenced in rule 567—33.9(455B). For purposes of this rule, the following terms shall have the meanings indicated in this subrule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

“*Actual emissions*” means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs “2” through “4,” except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567—33.9(455B). Instead, the requirements specified under the definitions for “projected actual emissions” and “baseline actual emissions” shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Allowable emissions*” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“*Baseline actual emissions*,” for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as “regulated NSR pollutant” is defined in this subrule, and as determined in accordance with paragraphs “1” through “4.”

1. For any existing electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

- (a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

- (b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

- (c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

- (d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph “1”(b) of this definition.

2. For an existing emissions unit, other than an electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

- (a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

- (b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

- (c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline

actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs “2”(b) and “2”(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit’s potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “1”; for other existing emissions units in accordance with the procedures contained in paragraph “2”; and for a new emissions unit in accordance with the procedures contained in paragraph “3.”

*“Baseline area”* means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1  $\mu\text{g}/\text{m}^3$  (annual average) for sulfur dioxide ( $\text{SO}_2$ ), nitrogen dioxide ( $\text{NO}_2$ ) or  $\text{PM}_{10}$ ; or equal to or greater than 0.3  $\mu\text{g}/\text{m}^3$  (annual average) for  $\text{PM}_{2.5}$ .

2. Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available  $\text{PM}_{10}$  increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of “baseline date” specified in this subrule.

*“Baseline concentration”* means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph “2” of this definition;

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

*“Baseline date”* means:

1. Either “major source baseline date” or “minor source baseline date” as follows:

(a) The “major source baseline date” means, in the case of  $\text{PM}_{10}$  and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of  $\text{PM}_{2.5}$ , October 20, 2010.

(b) The “minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for PM<sub>10</sub> and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For PM<sub>2.5</sub>, the trigger date is October 20, 2011.

2. The “baseline date” is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through October 20, 2010, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

“*Begin actual construction*” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

“*Best available control technology*” or “*BACT*” means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

“*Building, structure, facility, or installation*” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by title and part, so that “40 CFR 51” or “40 CFR Part 51” means “Title 40 Code of Federal Regulations, Part 51.”

“*Clean coal technology*” means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

“*Clean coal technology demonstration project*” means a project using funds appropriated under the heading “Department of Energy—Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

“*Commence*,” as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“*Complete*” means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

“*Construction*” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

“*Continuous emissions monitoring system*” or “*CEMS*” means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

“*Continuous emissions rate monitoring system*” or “*CERMS*” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

“*Continuous parameter monitoring system*” or “*CPMS*” means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record the average operational parameter value(s) on a continuous basis.

“*Electric utility steam generating unit*” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“*Emissions unit*” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.
2. An existing emissions unit is any emissions unit that does not meet the requirements in “1” above. A replacement unit is an existing emissions unit.

“*Enforceable permit condition*,” for the purpose of this chapter, means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any

permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through October 20, 2010, or under conditional, construction or Title V operating permit rules.

*"Federal land manager"* means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

*"Federally enforceable"* means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

*"Fugitive emissions"* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

*"High terrain"* means any area having an elevation 900 feet or more above the base of the stack of a source.

*"Indian governing body"* means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

*"Indian reservation"* means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

*"Innovative control technology"* means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

*"Lowest achievable emissions rate"* or *"LAER"* means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the SIP for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

*"Low terrain"* means any area other than high terrain.

*"Major modification"* means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO<sub>x</sub> shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair and replacement

- (b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

- (c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

- (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

- (e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally

enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 567—33.9(455B) shall apply.

*“Major source baseline date”* is defined under the definition of “baseline date.”

*“Major stationary source”* means:

(1) (a) Any one of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

- Coal cleaning plants (with thermal dryers);

- Kraft pulp mills;

- Portland cement plants;

- Primary zinc smelters;

- Iron and steel mill plants;

- Primary aluminum ore reduction plants;

- Primary copper smelters;

- Municipal incinerators capable of charging more than 250 tons of refuse per day;

- Hydrofluoric, sulfuric, and nitric acid plants;

- Petroleum refineries;

- Lime plants;

- Phosphate rock processing plants;

- Coke oven batteries;

- Sulfur recovery plants;

- Carbon black plants (furnace process);

- Primary lead smelters;

- Fuel conversion plants;

- Sintering plants;

- Secondary metal production plants;

- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140);

- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- Taconite ore processing plants;

- Glass fiber processing plants; and

- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph “1”(a), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph "1"(a) of this definition or to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

*"Minor source baseline date"* is defined under the definition of "baseline date."

*"Necessary preconstruction approvals or permits"* means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the SIP.

*"Net emissions increase"* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.3(2); and

- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of "net emissions increase" shall be determined as provided for under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of the definition of "baseline actual emissions," which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

- (a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

- (b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

- (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

- (b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

- (c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of "actual emissions," paragraph "2," shall not apply for determining creditable increases and decreases.

“*Nonattainment area*” means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

“*Permitting authority*” means the Iowa department of natural resources or the director thereof.

“*Pollution prevention*” means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. “Pollution prevention” does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

“*Potential to emit*” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“*Predictive emissions monitoring system*” or “*PEMS*” means all of the equipment necessary to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

“*Prevention of significant deterioration (PSD) program*” means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

“*Project*” means a physical change in, or change in method of operation of, an existing major stationary source.

“*Projected actual emissions,*” for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, “regular” shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs “1” through “3,” may elect to use the emissions unit’s potential to emit, in tons per year.

“*Reactivation of a very clean coal-fired electric utility steam generating unit*” means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation in which the unit:

1. Has not been in operation for the two-year period prior to the enactment of the Act, and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of the enactment;

2. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

3. Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

4. Is otherwise in compliance with the requirements of the Act.

“Regulated NSR pollutant” means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

(c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the department demonstrates to EPA’s satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM<sub>2.5</sub> concentrations;

(d) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment and unclassifiable areas, unless the department demonstrates to EPA’s satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area’s ambient PM<sub>2.5</sub> concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of “subject to regulation.”

5. Notwithstanding paragraphs “1” through “4,” the definition of “regulated NSR pollutant” shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

“Replacement unit” means an emissions unit for which all the criteria listed in paragraphs “1” through “4” of this definition are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

“Repowering” means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion; integrated gasification combined cycle; magnetohydrodynamics; direct and indirect coal-fired turbines; integrated gasification fuel cells; or, as determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of these technologies; and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater

waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

2. Repowering shall also include any oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

3. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Act.

“*Reviewing authority*” means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

“*Secondary emissions*” means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, “secondary emissions” must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification which causes the secondary emissions. “Secondary emissions” includes emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. “Secondary emissions” does not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

“*Significant*” means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions
- PM<sub>10</sub>: 15 tpy
- PM<sub>2.5</sub>: 10 tpy of direct PM<sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA’s satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM<sub>2.5</sub> concentrations)
- Ozone: 40 tpy of volatile organic compounds or NO<sub>x</sub>
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H<sub>2</sub>S): 10 tpy
- Total reduced sulfur (including H<sub>2</sub>S): 10 tpy
- Reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{-6}$  megagrams per year ( $3.5 \times 10^{-6}$  tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. “Significant” means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph “1,” any emissions rate.

3. Notwithstanding paragraph “1,” “significant,” for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

“*Significant emissions increase*” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

“*State implementation plan*” or “*SIP*” means the plan adopted by the state of Iowa and approved by the Administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs “4” and “5.”

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO<sub>2</sub>e equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO<sub>2</sub>e.

3. The term “emissions increase,” as used in this paragraph and in paragraphs “4” and “5,” shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2) “c” through 33.3(2) “h”) and a significant net emissions increase (as specified in 33.3(1), in the definitions of “net emissions increase” and “significant”) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO<sub>2</sub>e rather than calculated by applying the value specified in 33.3(1), in paragraph “2” of the definition of “significant.”

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and

5. Beginning July 1, 2011, in addition to the provisions in paragraph “4,” the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e, or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

“*Temporary clean coal technology demonstration project*” means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

“Title V permit” means an operating permit under Title V of the Act.

“Volatile organic compounds” or “VOC” means any compound included in the definition of “volatile organic compounds” found at 40 CFR 51.100(s) as amended through January 21, 2009.

**33.3(2) Applicability.** The requirements of this rule (PSD program requirements) apply to the construction of any new “major stationary source” as defined in subrule 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act. In addition to the provisions set forth in rules 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through November 9, 2005, are adopted by reference.

*a.* The requirements of subrules 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

*b.* No new major stationary source or major modification to which the requirements of subrule 33.3(10) through paragraph 33.3(18) “*e*” apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

*c.* Except as otherwise provided in paragraphs 33.3(2) “*i*” and “*j*,” and consistent with the definition of “major modification” contained in subrule 33.3(1), a project is a major modification for a “regulated NSR pollutant” if it causes two types of emissions increases: a “significant emissions increase”; and a “net emissions increase” which is “significant.” The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

*d.* The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs “*e*” through “*h*” of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of “net emissions increase.” Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

*e.* Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “projected actual emissions” and the “baseline actual emissions” for each existing emissions unit equals or exceeds the significant amount for that pollutant.

*f.* Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “potential to emit” from each new emissions unit following completion of the project and the “baseline actual emissions” for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

*g.* Reserved.

*h.* Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs “*e*” through “*g*” of this subrule, as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

*i.* For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567—33.9(455B).

*j.* Reserved.

**33.3(3) Ambient air increments.** The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through October 20, 2010, are adopted by reference.

**33.3(4) Ambient air ceilings.** The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) as amended through November 29, 2005, are adopted by reference.

**33.3(5) Restrictions on area classifications.** The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) as amended through November 29, 2005, are adopted by reference.

**33.3(6) Exclusions from increment consumption.** The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(f) are not adopted by reference: “the plan may provide that,” “the plan provides that,” and “it shall also provide that.” Additionally, the term “the plan” shall mean “SIP.”

**33.3(7) Redesignation.** The provisions for redesignation as specified in 40 CFR 52.21(g) as amended through November 29, 2005, are adopted by reference.

**33.3(8) Stack heights.** The provisions for stack heights as specified in 40 CFR 52.21(h) as amended through November 29, 2005, are adopted by reference.

**33.3(9) Exemptions.** The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) as amended through October 20, 2010, are adopted by reference.

**33.3(10) Control technology review.** The provisions for control technology review as specified in 40 CFR 52.21(j) as amended through November 29, 2005, are adopted by reference.

**33.3(11) Source impact analysis.** The provisions for a source impact analysis as specified in 40 CFR 52.21(k) as amended through October 20, 2010, are adopted by reference.

**33.3(12) Air quality models.** The provisions for air quality models as specified in 40 CFR 52.21(l) as amended through November 29, 2005, are adopted by reference.

**33.3(13) Air quality analysis.** The provisions for an air quality analysis as specified in 40 CFR 52.21(m) as amended through November 29, 2005, are adopted by reference.

**33.3(14) Source information.** The provisions for providing source information as specified in 40 CFR 52.21(n) as amended through November 29, 2005, are adopted by reference.

**33.3(15) Additional impact analyses.** The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) as amended through November 29, 2005, are adopted by reference.

**33.3(16) Sources impacting federal Class I areas—additional requirements.** The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) as amended through October 20, 2010, are adopted by reference. The following phrases contained in 40 CFR 51.166(p) are not adopted by reference: “the plan may provide that,” “the plan shall provide that,” “the plan shall provide” and “mechanism whereby.”

**33.3(17) Public participation.**

*a.* The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

*b.* Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

*c.* Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;
2. Prepare a revised fact sheet;
3. Prepare a revised fact sheet and reopen the public comment period; or
4. Reopen or extend the public comment period to provide interested persons an opportunity to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

**33.3(18) Source obligation.**

*a.* Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

*b.* At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

*c.* Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

*d.* Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

*e.* Reserved.

*f.* Except as otherwise provided in subparagraph (8), the following specific provisions shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a "reasonable possibility," within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner

or operator elects to use the method for calculating projected actual emissions as specified in subrule 33.3(1), paragraphs “1” through “3” of the definition of “projected actual emissions.”

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph “3” of the definition of “projected actual emissions” in subrule 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner’s or operator’s determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in paragraph “f.” The owner or operator is not required to obtain a determination from the department regarding the project’s projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);
2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, “regular” shall be determined by the department on a case-by-case basis); and
3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit’s annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is “significant” as defined in subrule 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;
2. The annual emissions as calculated pursuant to subparagraph (4); and
3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A “reasonable possibility” under this paragraph (paragraph 33.3(18) “f”) occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2. A projected actual emissions increase that, when added to the amount of emissions excluded under subrule 33.3(1), paragraph “3” of the definition of “projected actual emissions,” equals at least 50 percent of the amount that is a “significant emissions increase,” as defined under subrule 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph “1” of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph “f” available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

**33.3(19) Innovative control technology.** The provisions for innovative control technology as specified in 40 CFR 51.166(s) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(s) are not adopted by reference: “the plan may provide that” and “the plan shall provide that.”

**33.3(20) Conditions for permit issuance.** Except as explained below, a permit may not be issued to any new “major stationary source” or “major modification” as defined in subrule 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Significant Impact Levels (SILs)					
	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	( $\mu\text{g}/\text{m}^3$ )				
SO <sub>2</sub>	1.0	5	—	25	—
PM <sub>10</sub>	1.0	5	—	—	—
PM <sub>2.5</sub>	0.3	1.2	—	—	—
NO <sub>2</sub>	1.0	—	—	—	—
CO	—	—	500	—	2000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

**33.3(21) Administrative amendments.**

a. Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to subrule 33.3(21).

b. An administrative amendment is a permit revision that does any of the following:

(1) Corrects typographical errors;

- (2) Corrects word processing errors;
- (3) Identifies a change in name, address or telephone number of any person identified in the permit or provides a similar minor administrative change at the source; or
- (4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

**33.3(22) Permit rescission.** Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under rule 567—22.4(455B) shall remain in effect unless and until it is rescinded. The department will consider requests for rescission that meet the conditions specified under paragraphs “a” and “b” of this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or rule 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region 60 days prior to the proposed date for rescission shall be considered adequate notice.

*a.* The department may rescind a permit or a portion of a permit upon request from an owner or operator of a stationary source who holds a permit for a source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or earlier, provided the application also meets the provisions in paragraph “b” of this subrule.

*b.* If the application for rescission meets the provisions in paragraph “a” of this subrule, the department may rescind a permit if the owner or operator shows that the PSD provisions under 40 CFR 52.21 would not apply to the source or modification.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9224B, IAB 11/17/10, effective 12/22/10; ARC 9906B, IAB 12/14/11, effective 11/16/11; ARC 0260C, IAB 8/8/12, effective 9/12/12]

**567—33.4 to 33.8** Reserved.

**567—33.9(455B) Plantwide applicability limitations (PALs).** This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through November 29, 2005, are adopted by reference, except that the term “Administrator” shall mean “the department of natural resources.”

**567—33.10(455B) Exceptions to adoption by reference.** All references to Clean Units and Pollution Control Projects set forth in 40 CFR Sections 52.21 and 51.166 are not adopted by reference.

These rules are intended to implement Iowa Code chapter 455B.

[Filed 8/25/06, Notice 6/7/06—published 9/27/06, effective 11/1/06]

[Filed 2/8/07, Notice 12/6/06—published 2/28/07, effective 4/4/07]

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[Filed ARC 8215B (Notice ARC 7855B, IAB 6/17/09), IAB 10/7/09, effective 11/11/09]

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[Filed Emergency After Notice ARC 9906B (Notice ARC 9736B, IAB 9/7/11), IAB 12/14/11, effective 11/16/11]

[Filed ARC 0260C (Notice ARC 0097C, IAB 4/18/12), IAB 8/8/12, effective 9/12/12]

CHAPTER 64  
WASTEWATER CONSTRUCTION AND OPERATION PERMITS

[Prior to 7/1/83, DEQ Ch 19]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—64.1(455B) Definitions.** Rescinded IAB 3/11/09, effective 4/15/09.

**567—64.2(455B) Permit to construct.**

**64.2(1)** No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under 567—Chapter 9, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to 64.2(10) be allowed by any person subject to the conditions of the permit.

**64.2(2)** The site for each new wastewater treatment plant or expansion or upgrading of existing facilities must be inspected and approved by the department prior to submission of plans and specifications. Applications must be submitted in accordance with 567—60.4(455B).

**64.2(3)** Site approval under 64.2(2) shall be based on the criteria contained in the Ten States Standards, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent that separation distances of this subrule conflict with the separation distances of Iowa Code section 455B.134(3) “f,” the greater distance shall prevail. The following separation distances from a treatment works shall apply unless a separation distance exception is provided in the “Iowa Wastewater Facilities Design Standards.” The separation distance from lagoons shall be measured from the water surface.

*a.* 1000 feet from the nearest inhabitable residence, commercial building, or other inhabitable structure. If the inhabitable or commercial building is the property of the owner of the proposed treatment facility, or there is written agreement with the owner of the building, the separation criteria shall not apply. Any such written agreement shall be filed with the county recorder and recorded for abstract of title purposes, and a copy submitted to the department.

*b.* 1000 feet from public shallow wells.

*c.* 400 feet from public deep wells.

*d.* 400 feet from private wells.

*e.* 400 feet from lakes and public impoundments.

*f.* 25 feet from property lines and rights-of-way.

When the above separation distances cannot be maintained for the expansion, upgrading or replacement of existing facilities, the separation distances shall be maintained at no less than 90 percent of the existing separation distance on the site, providing no data is available indicating that a problem has existed or will be created.

**64.2(4)** Applications for a construction permit must be submitted to the director in accordance with 567—60.4(455B) at least 120 days in advance of the date of start of construction.

**64.2(5)** The director shall act upon the application within 60 days of receipt of a complete application by either issuing a construction permit or denying the construction permit in writing unless a longer review period is required and the applicant is so notified in writing. Notwithstanding the 120-day requirement in 64.2(4), construction of the approved system may commence immediately after the issuance of a construction permit.

**64.2(6)** The construction permit shall expire if construction thereunder is not commenced within one year of the date of issuance thereof. The director may grant an extension of time to commence construction if it is necessary or justified, upon showing of such necessity or justification to the director.

**64.2(7)** The director may modify or revoke a construction permit for cause which shall include but not be limited to the following:

*a.* Failure to construct said wastewater disposal system or part thereof in accordance with the approved plans and specifications.

*b.* Violation of any term or condition of the permit.

*c.* Obtaining a permit by misrepresentation of facts or failure to disclose fully all material facts.

*d.* Any change during construction that requires material changes in the approved plans and specifications.

**64.2(8)** A construction permit shall not be required for the following:

- a.* Storm sewers or storm water disposal systems that transport only storm water.
- b.* Any new disposal system or extension or addition to any existing disposal system that receives only domestic or sanitary sewage from a building, housing or occupied by 15 persons or less.
- c.* A privately owned pretreatment facility, except an anaerobic lagoon, where a treatment unit or units provide partial reduction of the strength or toxicity of the waste stream prior to additional treatment and disposal by another person, corporation, or municipality. However, the department may require that the design basis and construction drawings be filed for information purposes.

**64.2(9)** Review of applications.

*a.* Review of applications for construction permits shall be based on the criteria contained in the “Iowa Wastewater Facilities Design Standards,” the Ten States Standards, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent of any conflict between the above criteria the “Iowa Wastewater Facilities Design Standards” standards shall prevail.

*b.* The chapters of the “Iowa Wastewater Facilities Design Standards”\* that apply to wastewater facilities projects, and the date of adoption of those chapters are:

	<u>Chapter</u>	<u>Date of Adoption</u>
11.	Project submittals	April 25, 1979
12.	Iowa Standards for Sewer Systems	September 6, 1978 (Amended March 28, 1979 and May 20, 1987)
13.	Wastewater pumping stations and force mains	March 19, 1985
14.	Wastewater treatment works	March 22, 1984 (Amended May 20, 1987)
15.	Screening and grit removal	February 18, 1986
16.	Settling	March 22, 1984 (Amended May 20, 1987)
17.	Sludge handling & disposal	March 26, 1980
18.	Biological treatment	
	<i>A.</i> Fixed film media treatment	October 21, 1985
	<i>B.</i> Activated sludge	March 22, 1984
	<i>C.</i> Wastewater treatment ponds (Lagoons)	April 25, 1979 (Amended May 20, 1986 and May 20, 1987)
19.	Supplemental treatment processes	November 13, 1986
20.	Disinfection	February 18, 1986
21.	Land application of wastewater	April 25, 1979

\*The design manual as adopted and amended is available upon request to department, also filed with administrative rules coordinator.

*c.* Variances from the design standards and siting criteria which provide in the judgment of the department for substantially equivalent or improved effectiveness may be requested when there are unique circumstances not found in most projects. The director may issue variances when circumstances are appropriate. The denial of a variance may be appealed to the commission.

*d.* When reviewing the variance request the director may consider the unique circumstances of the project, direct or indirect environmental impacts, the durability and reliability of the alternative, and the purpose and intent of the rule or standard in question.

*e.* Circumstances that would warrant consideration of a variance (which provides for substantially equivalent or improved effectiveness) may include the following:

(1) The utilization of new equipment or new process technology that is not explicitly covered by the current design standards.

(2) The application of established and acceptable technologies in an innovative manner not covered by current standards.

(3) It is reasonably clear that the conditions and circumstances which were considered in the adoption of the rule or standard are not applicable for the project in question and therefore the effective purpose of the rule will not be compromised if a variance is granted.

**64.2(10)** Applications for sanitary sewer extension construction permits shall conform to the Iowa Standards for Sewer Systems, and approval shall be subject to the following:

*a.* A sanitary sewer extension construction permit may be denied if, at the time of application, the treatment facility treating wastewater from the proposed sewer is not in substantial compliance with its operating permit or if the treatment facility receives wastes in volumes or quantities that exceed its design capacity and interfere with its operation or performance.

If the applicant is operating under a compliance schedule which is being adhered to that leads to resolution of the substantial compliance issues or if the applicant can demonstrate that the problem has been identified, the planning completed, and corrective measures initiated, then the construction permit may be granted.

*b.* A sanitary sewer extension construction permit may be denied if bypassing has occurred at the treatment facility, except when any of the following conditions are being met:

(1) The bypassing is due to a combined sewer system, and the facility is in compliance with a long-term CSO control plan approved by the department.

(2) The bypassing occurs as a result of a storm with an intensity or duration greater than that of a storm with a return period of five years. (See App. A)

(3) The department determines that timely actions are being taken to eliminate the bypassing.

*c.* A sanitary sewer extension construction permit may be denied if an existing downstream sewer is or will be overloaded or surcharged, resulting in bypassing, flooded basements, or overflowing manholes, unless:

(1) The bypassing or flooding is the result of a precipitation event with an intensity or duration greater than that of a storm with a return period of two years. (See App. A); or

(2) The system is under full-scale facility planning (I/I and SSES) and the applicant provides a schedule that is approved by the department for rehabilitating the system to the extent necessary to handle the additional loadings.

*d.* Potential loads. Construction permits may be granted for sanitary sewer extensions that are sized to serve future loads that would exceed the capacity of the existing treatment works. However, initial connections shall be limited to the load that can be handled by the existing treatment works. The department will determine this load and advise the applicant of the limit. This limitation will be in effect until additional treatment capacity has been constructed.

**64.2(11)** Certification of completion. Within 30 days after completion of construction, installation or modification of any wastewater disposal system or part thereof or extension or addition thereto, the permit holder shall submit a certification by a registered professional engineer that the project was completed in accordance with the approved plans and specifications.

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

### **567—64.3(455B) Permit to operate.**

**64.3(1)** Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. An operation permit is not required for the following:

*a.* A private sewage disposal system which does not discharge into, or have the potential to reach, a designated water of the state or subsurface drainage tile (NOTE: private sewage disposal systems under this exemption are regulated under 567—Chapter 69);

- b.* A semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into a water of the state;
- c.* A pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal;
- d.* A discharge from a geothermal heat pump which does not reach a navigable water.
- e.* Water well construction and well services related discharge that does not reach a water of the United States as defined in 40 CFR Part 122.2.
- f.* Discharges from the application of biological pesticides and chemical pesticides where the discharge does not reach a water of the United States as defined in 40 CFR Part 122.2.

**64.3(2)** Rescinded, effective 2/20/85.

**64.3(3)** The owner of any disposal system or part thereof in existence before August 21, 1973, for which a permit has been previously granted by the Iowa department of health or the Iowa department of environmental quality shall submit such information as the director may require to determine the conformity of such system and its operation with the rules of the department by no later than 60 days after the receipt of a request for such information from the director. If the director determines that the disposal system does not conform to the rules of the department, the director may require the owner to make such modifications as are necessary to achieve compliance. A construction permit shall be required, pursuant to 64.2(1), prior to any such modification of the disposal system.

**64.3(4)** Applications.

*a. Individual permit.* Except as provided in 64.3(4)“*b*,” applications for operation permits required under 64.3(1) shall be made on forms provided by the department, as noted in 567—subrule 60.3(2). The application for an operation permit under 64.3(1) shall be filed pursuant to 567—subrule 60.4(2). Permit applications for a new discharge of storm water associated with construction activity as defined in 567—Chapter 60 under “storm water discharge associated with industrial activity” must be submitted at least 60 days before the date on which construction is to commence. Upon completion of a tentative determination with regard to the permit application as described in 64.5(1)“*a*,” the director shall issue operation permits for applications filed pursuant to 64.3(1) within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is required and the applicant is so notified.

*b. General permit.* A Notice of Intent for coverage under a general permit must be made on the appropriate form provided by the department listed in 567—subrule 60.3(2) and in accordance with 567—64.6(455B). A Notice of Intent must be submitted to the department according to the following:

(1) For existing storm water discharge associated with industrial activity, with the exception of discharges identified in subparagraphs (2) and (3) of this paragraph, on or before October 1, 1992.

(2) For any existing storm water discharge associated with industrial activity from a facility or construction site that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, on or before March 10, 2003.

For purposes of this subparagraph, municipality means city, town, borough, county, parish, district, association, or other public body created by or under state law. The entire population served by the public body shall be used in the determination of the population.

(3) For any existing storm water discharge associated with small construction activity on or before March 10, 2003.

(4) For storm water discharge associated with industrial activity which initiates operation after October 1, 1992, with the exception of discharges identified in subparagraphs (2) and (3) of this paragraph, where storm water discharge associated with industrial activity could occur as defined in rule 567—60.2(455B).

(5) For any private sewage disposal system installed after July 1, 1998, where subsoil discharge is not possible.

(6) For any discharge, except a storm water only discharge, from a mining or processing facility after July 18, 2001.

(7) For the discharge of biological pesticides and chemical pesticides which leave a residue to a water of the United States (as defined in 40 CFR Part 122.2) that meet any of the thresholds established in General Permit No. 7 after March 30, 2011.

**64.3(5)** Requirements for industries that discharge to another disposal system except storm water point sources.

*a.* The director may require any person discharging wastes to a publicly or privately owned disposal system to submit information similar to that required in an application for an operation permit, but no operation permit is required for such discharge.

Significant industrial users as defined in 567—Chapter 60 must submit a treatment agreement which meets the following criteria:

(1) The agreement must be on the treatment agreement form, number 542-3221, as provided by the department; and

(2) Must identify and limit the monthly average and the daily maximum quantity of compatible and incompatible pollutants discharged to the disposal system and the variations in daily flow; and

(3) Be signed and dated by the significant industrial user and the owner of the disposal system accepting the wastewater; and

(4) Provide that the quantities to be discharged to the disposal system must be in accordance with the applicable standards and requirements in 567—Chapter 62.

*b.* A significant industrial user must submit a new treatment agreement form 60 days in advance of a proposed expansion, production increase or process modification that may result in discharges of sewage, industrial waste, or other waste in excess of the discharge stated in the existing treatment agreement. An industry that would become a significant industrial user as a result of a proposed expansion, production increase or process modification shall submit a treatment agreement form 60 days in advance of the proposed expansion, production increase or process modification.

*c.* A treatment agreement form must be submitted at least 180 days before a new significant industrial user proposes to discharge into a wastewater disposal system. The owner of a wastewater disposal system shall notify the director by submitting a complete treatment agreement to be received at least 10 days prior to making any commitment to accept waste from a proposed new significant industrial user. However, the department may notify the owner that verification of the data in the treatment agreement may take longer than 10 days and advise that the owner should not enter into a commitment until the data is verified.

*d.* A treatment agreement form for each significant industrial user must be submitted with the facility plan or preliminary engineering report for the construction or modification of a wastewater disposal system. These agreements will be used in determining the design basis of the new or upgraded system.

*e.* Treatment agreement forms from significant industrial users shall be required as a part of the application for a permit to operate the wastewater disposal system receiving the wastes from the significant industrial user.

**64.3(6)** Rescinded, effective 7/23/86.

**64.3(7)** Operation permits may be granted for any period of time not to exceed five years. Applications for renewal of an operation permit must be submitted to the department 180 days in advance of the date the permit expires. General permits will be issued for a period not to exceed five years. Each permit to be renewed shall be subject to the provisions of all rules of the department in effect at the time of the renewal.

**64.3(8)** Identity of signatories of permit applications. The person who signs the application for a permit shall be:

*a. Corporations.* In the case of corporations, a responsible corporate officer. A responsible corporate officer means:

(1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or

(2) The manager of manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

*b. Partnerships.* In the case of a partnership, a general partner.  
*c. Sole proprietorships.* In the case of a sole proprietorship, the proprietor.  
*d. Municipal, state, federal, or other public agency.* In the case of a municipal, state, or other public facility, either the principal executive officer or the ranking elected official. A principal executive officer of a public agency includes:

- (1) The chief executive officer of the agency; or
- (2) A senior executive officer having responsibility for the overall operations of a unit of the agency.

*e. Storm water discharge associated with industrial activity from construction activities.* In the case of a storm water discharge associated with construction activity, either the owner of the site or the general contractor.

*f. Certification.* Any person signing a document under paragraph “a” to “d” of this subrule shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations.

The person who signs NPDES reports shall be a person described in this subrule, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by a duly authorized representative of the person described in this subrule. A person is a duly authorized representative if the authorization is made in writing by a person described in this subrule and the authorization specifies an individual or position having responsibility for the overall operation of the regulated facility, such as plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the corporation.

**64.3(9)** When necessary to comply with present standards which must be met at a future date, an operation permit shall include a schedule for the alteration of the permitted facility to meet said standards. Such schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to 567—64.2(455B). When necessary to comply with a pretreatment standard or requirement which must be met at a future date, a significant industrial user will be given a compliance schedule for meeting those requirements.

**64.3(10)** Operation permits shall contain such conditions as are deemed necessary by the director to ensure compliance with all applicable rules of the department, including monitoring and reporting conditions, to protect the public health and beneficial uses of state waters, and to prevent water pollution from waste storage or disposal operations.

**64.3(11)** The director may amend, revoke and reissue, or terminate in whole or in part any individual operation permit or coverage under a general permit for cause. Except for general permits, the director may modify in whole or in part any individual operation permit for cause. A variance or modification to the terms and conditions of a general permit shall not be granted. If a variance or modification to a general permit is desired, the applicant must apply for an individual permit following the procedures in 64.3(4) “a.”

*a.* Permits may be amended, revoked and reissued, or terminated for cause either at the request of any interested person (including the permittee) or upon the director’s initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

*b.* Cause under this subrule includes the following:

- (1) Violation of any term or condition of the permit.
- (2) Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.
- (3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(4) Failure to submit such records and information as the director shall require both generally and as a condition of the permit in order to ensure compliance with the discharge conditions specified in the permit.

(5) Failure or refusal of an NPDES permittee to carry out the requirements of 64.7(5)“c.”

(6) Failure to provide all the required application materials or appropriate fees.

(7) A request for a modification of a schedule of compliance, an interim effluent limitation, or the minimum monitoring requirements pursuant to 567—paragraph 60.4(2)“b.”

(8) Causes listed in 40 CFR 122.62 and 122.64.

*c.* The permittee shall furnish to the director, within a reasonable time, any information that the director may request to determine whether cause exists for amending, revoking and reissuing, or terminating a permit, including a new permit application.

*d.* The filing of a request by an interested person for an amendment, revocation and reissuance, or termination does not stay any permit condition.

*e.* If the director decides the request is not justified, the director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, hearings, or appeals.

*f.* Draft permits.

(1) If the director tentatively decides to amend, revoke and reissue, or terminate a permit, a draft permit shall be prepared according to 64.5(1).

(2) When a permit is amended under this paragraph, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit.

(3) When a permit is revoked and reissued under this paragraph, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) If the permit amendment falls under the definition of “minor amendment” in 567—60.2(455B), the permit may be amended without a draft permit or public notice.

(5) During any amendment, revocation and reissuance, or termination proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

**64.3(12)** No permit may be issued:

*a.* When the applicant is required to obtain certification under Section 401 of the Clean Water Act and that certification has not been obtained or waived;

*b.* When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

*c.* To a new source or new discharger if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge to a water segment which does not meet applicable water quality standards must demonstrate, before the close of the public comment period for a draft NPDES permit, that:

(1) There is sufficient remaining load in the water segment to allow for the discharge; and

(2) The existing dischargers to the segment are subject to compliance schedules designed to bring the segment into compliance with water quality standards.

The director may waive the demonstration if the director already has adequate information to demonstrate (1) and (2).

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11]

#### **567—64.4(455B) Issuance of NPDES permits.**

**64.4(1)** *Individual permit.* An individual NPDES permit is required when there is a discharge of a pollutant from any point source into navigable waters. An NPDES permit is not required for the following:

*a.* Reserved.

*b.* Discharges of dredged or fill material into navigable waters which are regulated under Section 404 of the Act;

c. The introduction of sewage, industrial wastes or other pollutants into a POTW by indirect dischargers. (This exclusion from requiring an NPDES permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, indirect discharges shall comply with pretreatment standards promulgated by the administrator pursuant to Section 307(b) of the Act and adopted by reference by the commission);

d. Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances);

e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to the following:

- (1) Discharges from concentrated animal feeding operations as defined in 40 CFR 122.23;
- (2) Discharges from concentrated aquatic animal production facilities as defined in 40 CFR 122.24;
- (3) Discharges to aquaculture projects as defined in 40 CFR 122.25;
- (4) Discharges from silvicultural point sources as defined in 40 CFR 122.27;

f. Return flows from irrigated agriculture; and

g. Water transfers, which are defined as activities that convey or connect navigable waters without subjecting the transferred water to intervening industrial, municipal, or commercial use.

**64.4(2) General permit.**

a. The director may issue general permits which are consistent with 64.4(2)“b” and the requirements specified in 567—64.6(455B), 567—64.7(455B), 567—subrule 64.8(2), and 567—64.9(455B) for the following activities:

- (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992).
- (2) Private sewage disposal system discharges permitted under 567—Chapter 69 where subsoil discharge is not possible as determined by the administrative authority.
- (3) Discharges from water well construction and related well services where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.
- (4) For any discharge, except a storm water only discharge, from a mining or processing facility.
- (5) Discharges from the application of biological pesticides and chemical pesticides which leave a residue where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.

b. Each general permit issued by the department must:

- (1) Be adopted as an administrative rule in accordance with Iowa Code chapter 17A, the Administrative Procedure Act. Each proposed permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development,
- (2) Correspond to existing geographic or political boundaries, and
- (3) Be identified in 567—64.15(455B).

c. If an NPDES permit is required for an activity covered by a general permit, the applicant may seek either general permit coverage or an individual permit. Procedures and requirements for obtaining an individual NPDES permit are detailed in 64.3(4)“a.” Procedures for filing a Notice of Intent for coverage under a general permit are described in 567—64.6(455B) “Completing a Notice of Intent for Coverage Under a General Permit.”

**64.4(3) Effect of a permit.**

a. Except for any toxic effluent standards and prohibitions imposed under Section 307 of the Act and standards for sewage sludge use or disposal under Section 405(d) of the Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403 and 405(a)-(b) of the Act, and equivalent limitations and standards set out in 567—Chapters 61 and 62. However, a permit may be terminated during its term for cause as set forth in 64.3(11). Compliance with a permit condition which implements a particular standard for sewage

sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

*b.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11]

**567—64.5(455B) Notice and public participation in the individual NPDES permit process.**

**64.5(1) Formulation of tentative determination.** The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a permit application in advance of the public notice as described in 64.5(2).

*a.* If the tentative determination is to issue an NPDES permit, the department shall prepare a permit rationale for each draft permit pursuant to 64.5(3) and a draft permit. The draft permit shall include the following:

(1) Effluent limitations identified pursuant to 64.6(2) and 64.6(3), for those pollutants proposed to be limited.

(2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to 64.7(4), for meeting the effluent limitations and other permit requirements.

(3) Any other special conditions (other than those required in 64.6(5)) which will have a significant impact upon the discharge described in the permit application.

*b.* If the tentative determination is to deny an NPDES permit, the department shall prepare a notice of intent to deny the permit application. The notice of intent to deny an application will be placed on public notice as described in 64.5(2).

*c.* If the tentative determination is to issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit the final permit to the applicant. The applicant will have 30 days to appeal the final operation permit.

*d.* If the tentative determination is to deny an operation permit (non-NPDES permit), no public notice is required. The department shall send written notice of the denial to the applicant. The applicant will have 30 days to appeal the denial.

**64.5(2) Public notice for NPDES permits.**

*a.* Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the procedures of subparagraphs (1) to (3).

(1) The public notice for a draft NPDES permit or major permit amendment shall be circulated by the applicant within the geographical areas of the proposed discharge by posting the public notice in the post office and public places of the city nearest the premises of the applicant in which the effluent source is located; by posting the public notice near the entrance to the applicant's premises and in nearby places; and by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation. The public notice for the denial of a permit application shall be sent to the applicant and circulated by the department within the geographical areas of the proposed discharge by publishing the public notice in local newspapers and periodicals, or, if appropriate, in a newspaper of general circulation.

(2) The public notice shall be sent by the department to any person upon request.

(3) Upon request, the department shall add the name of any person or group to the distribution list to receive copies of all public notices concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area and shall send a copy of all public notices to such persons.

*b.* The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the permit application and request a public hearing pursuant to 64.5(6). Written comments may be submitted by paper or electronic means. All comments submitted during

the 30-day comment period shall be retained by the department and considered by the director in the formulation of the director's final determinations with respect to the permit application. The period for comment may be extended at the discretion of the department. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 64.5(8).

c. The contents of the public notice of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall include at least the following:

- (1) The name, address, and telephone number of the department.
- (2) The name and address of each applicant.
- (3) A brief description of each applicant's activities or operations which result in the discharge described in the permit application (e.g., municipal waste treatment plant, corn wet milling plant, or meat packing plant).
- (4) The name of the waterway to which each discharge of the applicant is made and a short description of the location of each discharge of the applicant on the waterway indicating whether such discharge is a new or an existing discharge.
- (5) A statement of the department's tentative determination to issue or deny an NPDES permit for the discharge or discharges described in the permit application.
- (6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph "b" of this subrule, procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.
- (7) The address, telephone number, and E-mail address of places at which interested persons may obtain further information, request a copy of the tentative determination and any associated documents prepared pursuant to 64.5(1), request a copy of the permit rationale described in 64.5(3), and inspect and copy permit forms and related documents.

d. No public notice is required for a minor permit amendment, including an amendment to correct typographical errors, include more frequent monitoring requirements, revise interim compliance schedule dates, change the owner name or address, include a local pretreatment program, or remove a point source outfall that does not result in the discharge of pollutants from other outfalls.

e. No public notice is required when a request for a permit amendment or a request for a termination of a permit is denied. The department shall send written notice of the denial to the requester and the permittee only. No public notice is required if an applicant withdraws a permit application.

**64.5(3) *Permit rationales and notices of intent to deny.***

a. When the department has made a determination to issue an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a permit rationale with respect to the application described in the public notice. The contents of such permit rationales shall include at least the following information:

- (1) A detailed description of the location of the discharge described in the permit application.
- (2) A quantitative description of the discharge described in the permit application which includes:
  1. The average daily discharge in pounds per day of any pollutants which are subject to limitations or prohibitions under 64.7(2) or Section 301, 302, 306 or 307 of the Act and regulations published thereunder; and
  2. For thermal discharges subject to limitation under the Act, the average and maximum summer and winter discharge temperatures in degrees Fahrenheit.
- (3) The tentative determinations required under 64.5(1).
- (4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards applicable to the receiving waters and effluent standards and limitations applicable to the proposed discharge.
- (5) An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.
- (6) Any calculations or other necessary explanation of the derivation of effluent limitations.

b. When the department has made a determination to deny an application for an NPDES permit as described in 64.5(1), the department shall prepare and, upon request, shall send to any person a notice of intent to deny with respect to the application described in the public notice. The contents of such notice of intent to deny shall include at least the following information:

- (1) A detailed description of the location of the discharge described in the permit application; and
- (2) A description of the reasons supporting the tentative decision to deny the permit application.

c. When the department has made a determination to issue an operation permit as described in 64.5(1), the department shall prepare a short description of the waste disposal system and the reasons supporting the decision to issue an operation permit. The description shall be sent to the operation permit applicant upon request.

d. When the department has made a determination to deny an application for an operation permit as described in 64.5(1), the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

e. Upon request, the department shall add the name of any person or group to a distribution list to receive copies of permit rationales and notices of intent to deny and shall send a copy of all permit rationales and notices of intent to deny to such persons or groups.

**64.5(4) Notice to other government agencies.** Prior to the issuance of an NPDES permit, the department shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Notifications may be distributed and written views or recommendations may be submitted by paper or electronic means. Procedures for such notification shall include the procedures of paragraphs “a” to “f.”

a. At the time of issuance of public notice pursuant to 64.5(2), the department shall transmit the public notice to any other state whose waters may be affected by the issuance of the NPDES permit. Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendation thus received, the director shall provide to the affected state or states and to the regional administrator a written explanation of the reasons for failing to accept any written recommendation.

b. At the time of issuance of public notice pursuant to 64.5(2), the department shall send the public notice for proposed discharges (other than minor discharges) into navigable waters to the appropriate district engineer of the army corps of engineers.

(1) The department and the district engineer for each corps of engineers district within the state may arrange for: notice to the district engineer of minor discharges; waiver by the district engineer of the right to receive public notices with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof; and any procedures for the transmission of forms, period of comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

(2) A copy of any written agreement between the department and a district engineer shall be forwarded to the regional administrator and shall be available to the public for inspection and copying in accordance with 567—Chapter 2.

c. Upon request, the department shall send the public notice to any other federal, state, or local agency, or any affected county, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to 64.5(6).

d. The department shall send the public notice for any proposed NPDES permit within the geographical area of a designated and approved management agency under Section 208 of the Act (33 U.S.C.1288).

e. The department shall send the public notice to the local board of health for the purpose of assisting the applicant in coordinating the applicable requirements of the Act and Iowa Code chapter 455B with any applicable requirements of the local board of health.

*f.* Upon request, the department shall provide any of the entities listed in 64.5(4) “a” through “e” with a copy of the permit rationale, permit application, or proposed permit prepared pursuant to 64.5(1).

**64.5(5) Public access to NPDES information.** The records of the department connected with NPDES permits are available for public inspection and copying to the extent provided in 567—Chapter 2.

**64.5(6) Public hearings on proposed NPDES permits.** The applicant, any affected state, the regional administrator, or any interested agency, person or group of persons may request or petition for a public hearing with respect to an NPDES application. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the director within the 30-day period prescribed in 64.5(2) “b” and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The director shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding the hearing. Any hearing held pursuant to this subrule shall be held in the geographical area of the proposed discharge, or other appropriate area in the discretion of the director, and may, as appropriate, consider related groups of permit applications.

**64.5(7) Public notice of public hearings on proposed NPDES permits.**

*a.* Public notice of any hearing held pursuant to 64.5(6) shall be circulated at least as widely as was the notice of the tentative determinations with respect to the permit application.

(1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(2) Notice shall be sent to all persons and government agencies which received a copy of the notice for the permit application;

(3) Notice shall be mailed to any person or group upon request; and

(4) Notice pursuant to subparagraphs (1) and (2) of this paragraph shall be made at least 30 days in advance of the hearing.

*b.* The contents of public notice of any hearing held pursuant to 64.5(6) shall include at least the following:

(1) The name, address, and telephone number of the department;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) The name of the water body to which each discharge is made and a short description of the location of each discharge to the water body;

(4) A brief reference to the public notice issued for each NPDES application, including the date of issuance;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the person or persons requesting the hearing;

(8) The address and telephone number of the premises where interested persons may obtain further information, request a copy of the draft NPDES permit prepared pursuant to 64.5(1), request a copy of the permit rationale prepared pursuant to 64.5(3), and inspect and copy permit forms and related documents;

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) The final date for submission of comments (paper or electronic) regarding the tentative determinations with respect to the permit application.

**64.5(8) Response to comments.** At the time a final NPDES permit is issued, the director shall issue a response to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant, and the document shall be made available to the public upon request. The responsiveness summary shall:

*a.* Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and

*b.* Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the public notice or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.  
[ARC 7625B, IAB 3/11/09, effective 4/15/09]

**567—64.6(455B) Completing a Notice of Intent for coverage under a general permit.**

**64.6(1)** *Contents of a complete Notice of Intent.* An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in paragraphs “a” to “c” of this subrule except that a Notice of Intent is not required for discharges authorized under General Permit No. 6.

*a. Notice of Intent Application Form.* The following Notice of Intent forms must be completed in full.

(1) General Permit No. 1 “Storm Water Discharge Associated with Industrial Activity,” Form 542-1415.

(2) General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities,” Form 542-1415.

(3) General Permit No. 3 “Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants and Construction Sand and Gravel Facilities,” Form 542-1415.

(4) General Permit No. 4 “Discharge from On-Site Wastewater Treatment and Disposal Systems,” Form 542-1541.

(5) General Permit No. 5 “Discharge from Mining and Processing Facilities,” Form 542-4006.

(6) General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”

*b. General permit fee.* The general permit fee according to the schedule in 64.16(455B) payable to the Department of Natural Resources.

*c. Public notification.* The following public notification requirements must be completed for the corresponding general permit.

(1) General Permits No. 1, No. 2 and No. 3. A demonstration that a public notice was published in at least two newspapers with the largest circulation in the area in which the facility is located or the activity will occur. If a facility or activity authorized by General Permit No. 3 is to be relocated to a site not included in the original notice, a public notice need be published in only one newspaper. The newspaper notices shall, at the minimum, contain the following information:

PUBLIC NOTICE OF STORM WATER DISCHARGE

The (applicant name) plans to submit a Notice of Intent to the Iowa Department of Natural Resources to be covered under NPDES General Permit (select the appropriate general permit—No. 1 “Storm Water Discharge Associated with Industrial Activity” or General Permit No. 2 “Storm Water Discharge Associated with Industrial Activity for Construction Activities”). The storm water discharge will be from (description of industrial activity) located in (¼ section, township, range, county). Storm water will be discharged from (number) point source(s) and will be discharged to the following streams: (stream name(s)).

Comments may be submitted to the Storm Water Discharge Coordinator, IOWA DEPARTMENT OF NATURAL RESOURCES, Environmental Protection Division, 900 E. Grand Avenue, Des Moines, IA 50319-0034. The public may review the Notice of Intent from 8 a.m. to 4:30 p.m., Monday through Friday, at the above address after it has been received by the department.

(2) General Permits No. 4, No. 5, No. 6, and No. 7. There are no public notification requirements for these permits.

**64.6(2)** *Authorization to discharge under a general permit.* Upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)“b,” the applicant is authorized to discharge

after evaluation of the Notice of Intent by the department is complete and the determination has been made that the contents of the Notice of Intent satisfy the requirements of 567—Chapter 64. The discharge authorization date for all storm water discharges associated with industrial activity that are in existence on or before October 1, 1992, shall be October 1, 1992. The applicant will receive notification by the department of coverage under the general permit. If any of the items required for filing a Notice of Intent specified in 64.6(1) are missing, the department will consider the application incomplete and will notify the applicant of the incomplete items.

**64.6(3) *General permit suspension or revocation.*** In addition to the causes for suspension or revocation which are listed in 64.3(11), the director may suspend or revoke coverage under a general permit issued to a facility or a class of facilities for the following reasons and require the applicant to apply for an individual NPDES permit in accordance with 64.3(4) “a”:

a. The discharge would not comply with Iowa’s water quality standards pursuant to 567—Chapter 61, or

b. The department finds that the activities associated with a Notice of Intent filed with the department do not meet the conditions of the general permit. The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application, or

c. The department finds that water well construction and well service discharge are not managed in a manner consistent with the conditions specified in General Permit No. 6, or

d. The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7.

**64.6(4) *Eligibility for individual permit holders.*** A person holding an individual NPDES permit for an activity covered by a general permit may apply for coverage under a general permit upon expiration of the individual permit and by filing a Notice of Intent according to procedures described in 64.3(4) “b.”

**64.6(5) *Filing a Notice of Discontinuation.*** A notice to discontinue the activity covered by the NPDES general permit shall be made in writing to the department 30 days prior to or after discontinuance of the discharge. For storm water discharge associated with industrial activity for construction activities, the discharge will be considered as discontinued when “final stabilization” has been reached. Final stabilization means that all soil-disturbing activities at the site have been completed and that a uniform perennial vegetative cover with a density of 70 percent for the area has been established or equivalent stabilization measures have been employed.

The notice of discontinuation shall contain the following:

a. The name of the facility to which the permit was issued,

b. The general permit number and permit authorization number,

c. The date the permitted activity was, or will be, discontinued, and

d. A signed certification in accordance with the requirements in the general permit.

**64.6(6) *Transfer of ownership—construction activity part of a larger common plan of development.*** For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in the event a permittee transfers ownership of all or any part of property subject to NPDES General Permit No. 2, both the permittee and transferee shall be responsible for compliance with the provisions of the general permit for that portion of the project which has been transferred, including when the transferred property is less than one acre in area, from and after the date the department receives written notice of the transfer, provided that:

a. The transferee is notified in writing of the existence and location of the general permit and pollution prevention plan, and of the transferee’s duty to comply, and proof of such notice is included with the notice to the department of the transfer.

b. If the transferee agrees, in writing, to become the sole responsible permittee for the property which has been transferred, then the transferee shall be solely responsible for compliance with the provisions of the general permit for the transferred property from and after the date the department receives written notice of the transferee’s assumption of responsibility.

c. If the transferee agrees, in writing, to obtain coverage under NPDES General Permit No. 2 for the property which has been transferred, then the transferee is required to obtain coverage under NPDES General Permit No. 2 for the transferred property from and after the date the department receives written notice of the transferee's assumption of responsibility for permit coverage. After the transferee has agreed, in writing, to obtain coverage under NPDES General Permit No. 2 for the transferred property and the department has received written notice of the transferee's assumption of responsibility for permit coverage for the transferred property, the authorization issued under NPDES General Permit No. 2 to the transferor for the transferred property shall be considered by the department as not providing NPDES permit coverage for the transferred property and the transferor's authorization issued under NPDES General Permit No. 2 for, and only for, the transferred property, shall be deemed by the department as being discontinued without further action of the transferor.

d. All notices sent to the department as described in this subrule shall contain the name of the development as submitted to the department in the original Notice of Intent and as modified by any subsequent written notices of name changes submitted to the department, the authorization number assigned to the authorization by the department, the legal description of the transferred property including lot number, if any, and any other information necessary to precisely locate the transferred property and to establish the legality of the document.

[ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11]

**567—64.7(455B) Terms and conditions of NPDES permits.**

**64.7(1) Prohibited discharges.** No NPDES permit may authorize any of the discharges prohibited by 567—62.1(455B).

**64.7(2) Application of effluent, pretreatment and water quality standards and other requirements.** Each NPDES permit shall include any of the following that is applicable:

a. An effluent limitation guideline promulgated by the administrator under Sections 301 and 304 of the Act and adopted by reference by the commission in 567—62.4(455B).

b. A standard of performance for a new source promulgated by the administrator under Section 306 of the Act and adopted by reference by the commission in 567—62.4(455B).

c. An effluent standard, effluent prohibition or pretreatment standard promulgated by the administrator under Section 307 of the Act and adopted by reference by the commission in 567—62.4(455B) or 567—62.5(455B).

d. A water quality related effluent limitation established by the administrator pursuant to Section 302 of the Act.

e. Prior to promulgation by the administrator of applicable effluent and pretreatment standards under Sections 301, 302, 306, and 307 of the Act, such conditions as the director determines are necessary to carry out the provisions of the Act.

f. Any other limitation, including those:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the antidegradation policy in 567—subrule 61.2(2); or

(2) Necessary to meet any other federal law or regulation; or

(3) Required to implement any applicable water quality standards; or

(4) Any legally applicable requirement necessary to implement total maximum daily loads established pursuant to Section 303(d) of the Act and incorporated in the continuing planning process approved under Section 303(e) of the Act and any regulations and guidelines issued pursuant thereto.

g. Limitations must control all pollutants or pollutant parameters which the director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria, in 567—Chapter 61. When the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion of the water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

*h.* Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to Section 208(b) of the Act.

In any case where an NPDES permit applies to effluent standards and limitations described in paragraph “a,” “b,” “c,” “d,” “e,” “f,” “g,” or “h,” the director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some verification of that statement. In any case where an NPDES permit applies any more stringent effluent limitation, described in 64.7(2) “f”(1) or “g,” based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

**64.7(3)** *Effluent limitations in issued NPDES permits.* In the application of effluent standards, and limitations, water quality standards, and other legally applicable requirements, pursuant to 64.7(2), the director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director may, in addition to the specification of daily quantitative limitations by weight, specify other limitations such as average or maximum concentration limits, for the level of pollutants authorized in the discharge.

[COMMENT. The manner in which effluent limitations are expressed will depend upon the nature of the discharge. Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges). Batch discharges should be more particularly described and limited in terms of (i) frequency (e.g., to occur not more than once every three weeks), (ii) total weight (e.g., not to exceed 300 pounds per batch discharge), (iii) maximum rate of discharge of pollutants during the batch discharge (e.g., not to exceed 2 pounds per minute), and (iv) prohibition or limitation by weight, concentration, or other appropriate measure of specified pollutants (e.g., shall not contain at any time more than 0.1 ppm zinc or more than ¼ pound of zinc in any batch discharge). Other intermittent discharges, such as recirculation blowdown, should be particularly limited to comply with any applicable water quality standards and effluent standards and limitations.]

**64.7(4)** *Schedules of compliance in issued NPDES permits.* The director shall follow the following procedure in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

*a.* With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in 64.7(2) “f” and 64.7(2) “g,” the permittee shall be required to take specific steps to achieve compliance with: applicable effluent standards and limitations; if more stringent, water quality standards; or if more stringent, legally applicable requirements listed in 64.7(2) “f” and 64.7(2) “g.” In the absence of any legally applicable schedule of compliance, such steps shall be achieved in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

*b.* In any case where the period of time for compliance specified in paragraph “a” of this subrule exceeds nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

[COMMENT. Certain interim requirements such as the submission of preliminary or final plans often require less than nine months and thus a shorter interval should be specified. Other requirements such as the construction of treatment facilities may require several years for completion and may not readily subdivide into nine-month intervals. Long-term interim requirements should nonetheless be subdivided into intervals not longer than nine months at which the permittee is required to report progress to the director pursuant to 64.7(4) “c.”]

c. Either before or up to 14 days following each interim date and the final date of compliance the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

d. On the last day of the months of February, May, August, and November the director shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph "b" of this subrule). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name and address of each noncomplying permittee.
- (2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility; failure to notify of compliance with interim requirement to complete construction by June 30).
- (3) A short description of any actions or proposed actions by the permittee to comply or by the director to enforce compliance with the interim or final requirement.
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections).

e. If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the director may, pursuant to 567—Chapters 7 and 60, modify, suspend or revoke the permit or take direct enforcement action.

**64.7(5)** *Other terms and conditions of issued NPDES permits.* Each issued NPDES permit shall provide for and ensure the following:

a. That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit; that if the terms and conditions of a general permit are no longer applicable to a discharge, the applicant shall apply for an individual NPDES permit;

b. That the permit may be amended, revoked and reissued, or terminated in whole or in part for the causes provided in 64.3(11) "b."

c. That the permittee shall permit the director or the director's authorized representative upon the presentation of credentials:

- (1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;
- (2) To have access to and copy any records required to be kept under terms and conditions of the permit;
- (3) To inspect any monitoring equipment or method required in the permit; or
- (4) To sample any discharge of pollutants.

d. That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the director of the following:

- (1) One hundred eighty days in advance of any new introduction of pollutants into such treatment works from a new source as defined in 567—Chapter 60 if such source were discharging pollutants;
- (2) Except as specified below, 180 days in advance of any new introduction of pollutants into such treatment works from a source which would be subject to Section 301 of the Act if such source were discharging pollutants. However, the connection of such a source need not be reported if the source contributes less than 25,000 gallons of process wastewater per day at the average discharge, or contributes less than 5 percent of the organic or hydraulic loading of the treatment facility, or is not subject to a federal

pretreatment standard adopted by reference in 567—Chapter 62, or does not contribute pollutants that may cause interference or pass through; and

(3) Sixty days in advance of any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

*e.* That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of Sections 204(b), 307, and 308 of the Act. As a means of ensuring such compliance, the permittee shall require that each industrial user subject to the requirements of Section 307 of the Act give to the permittee periodic notice (over intervals not to exceed six months) of progress toward full compliance with Section 307 requirements. The permittee shall forward a copy of the notice to the director.

*f.* That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of treatment and control which have been installed or are used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance also include adequate laboratory control and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which have been installed by the permittee only when such operation is necessary to achieve compliance with the conditions of the permit.

*g.* That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

*h.* If an applicant for an NPDES permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of an NPDES permit, the director shall specify additional terms and conditions of the issued NPDES permit which shall prohibit the proposed disposal or control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare. (See rule 567—62.9(455B) which prohibits the disposal of pollutants, other than heat, into wells within Iowa.)

*i.* That the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

*j.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the terms of this permit.

**64.7(6)** *POTW compliance—plan of action required.* The owner of a publicly owned treatment works (POTW) must prepare and implement a plan of action to achieve and maintain compliance with final effluent limitations in its NPDES permit, as specified below:

*a.* The director shall notify the owner of a POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action to the appropriate regional field office of the department within six months of such notice, unless a longer time is needed and is authorized in writing by the director.

*b.* The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action.

The plan may provide for a phased construction approach to meet interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter term projects may provide incremental benefits to water quality in the interim.

Information on the purpose and preparation of the plan can be found in the departmental document entitled "Guidance on Preparing a Plan of Action," available from the department's regional field offices.

c. Upon submission of a complete plan of action to the department, the plan should be reviewed and approved or disapproved within 60 days unless a longer time is required and the POTW owner is so notified.

d. The NPDES permit for the facility shall be amended to include the implementation schedule or other actions developed through the plan to achieve and maintain compliance.

This rule is intended to implement Iowa Code chapter 455B, division III, part 1 (455B.171 to 455B.187).

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

### **567—64.8(455B) Reissuance of operation and NPDES permits.**

**64.8(1) Individual operation and NPDES permits.** Individual operation and NPDES permits will be reissued according to the procedures identified in 64.8(1) "a" to "c."

a. Any operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit pursuant to 567—60.4(455B). For a POTW, permission to submit an application at a later date may be granted by the director. In addition, the applicant must submit or have submitted information to show:

(1) That the permittee is in compliance or has substantially complied with all the terms, conditions, requirements and schedules of compliance of the expiring operation or NPDES permit.

(2) Up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge.

(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards and other legally applicable requirements listed in 64.7(2), including any additions to, or revision or modifications of, such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

b. The director shall follow the notice and public participation procedures specified in 567—64.5(455B) in connection with each request for reissuance of an NPDES permit.

c. Notwithstanding any other provision in these rules, any new point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (October 18, 1972) and which is so constructed as to meet all applicable standards of performance for new sources shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code, as amended through December 31, 1976, whichever period ends first.

**64.8(2) Renewal of coverage under a general permit.** Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs "a" to "d."

a. If a permittee intends to continue an activity covered by a general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent in accordance with 64.6(1).

b. A complete Notice of Intent for coverage under a reissued or renewed general permit must be submitted to the department within 180 days after the expiration date of a general permit.

c. A person holding a general permit is subject to the terms of the permit until it expires or a Notice of Discontinuation is submitted in accordance with 64.6(5). If the person holding a general permit continues the activity beyond the expiration date, the conditions of the expired general permit will remain in effect provided the permittee submits a complete Notice of Intent for coverage under a renewed or reissued general permit within 180 days after the expiration date of the expired general permit. If the person continues an activity for which the general permit has expired and the general permit has not been

reissued or renewed, the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4) "a."

*d.* The Notice of Intent requirements shall not include a public notification when a general permit has been reissued or renewed provided the permittee has already submitted a complete Notice of Intent including the public notification requirements of 64.6(1). Another public notice is required when any information, including facility location, in the original public notice is changed.

**64.8(3) Continuation of expiring operation and NPDES permits.**

*a.* The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

- (1) The permittee has submitted a complete application under 60.4(2); and
- (2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

*b.* Operation and NPDES permits continued under this subrule remain fully effective and enforceable.

*c.* If a permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any of the following:

- (1) Initiate enforcement action on the permit which has been continued;
- (2) Issue a notice of intent to deny a permit under 64.5(1);
- (3) Reissue a permit with appropriate conditions in accordance with this subrule; or
- (4) Take other actions authorized by this rule.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 9365B, IAB 2/9/11, effective 3/30/11]

**567—64.9(455B) Monitoring, record keeping and reporting by operation permit holders.** Operation permit holders are subject to any applicable requirements and provisions specified in the operation permit issued by the department.

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

**567—64.10(455B) Silvicultural activities.** The following is adopted by reference: 40 CFR 122.27.

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

**567—64.11 and 64.12** Reserved.

**567—64.13(455B) Storm water discharges.**

**64.13(1)** The following is adopted by reference: 40 CFR 122.26.

**64.13(2)** Small municipal separate storm sewer systems.

*a.* For any discharge from a regulated small municipal separate storm sewer system (MS4), the permit application must be submitted no later than March 10, 2003, if designated under this subrule.

*b.* All MS4s located in urbanized areas as defined by the latest decennial census and all MS4s which serve 10,000 people or more located outside urbanized areas and where the average population density is 1,000 people/square mile or more are regulated small MS4s unless waiver criteria established by the department are met and a waiver has been granted by the department.

*c.* Permit coverage requirements for MS4s located in urbanized areas and serving 1,000 or more people and fewer than 10,000 people may be waived if the following requirements are met:

- (1) The department has evaluated all waters of the United States that receive a discharge from the MS4, and for all such waters, the department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established total maximum daily load (TMDL) that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern. The pollutants of concern include biochemical oxygen demand, sediment or a parameter that addresses sediment (total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4.

(2) The department has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts including habitat and biological impacts.

*d.* Permit coverage requirements for MS4s located in urbanized areas and serving fewer than 1,000 people may be waived if the following requirements are met:

(1) The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program.

(2) The MS4 discharges any pollutants that have been identified as a cause of impairment of any water body to which the MS4 discharges and the department has determined that storm water controls are not needed based upon wasteload allocations that are a part of an EPA approved or established TMDL that addresses the pollutants of concern.

*e.* Permit coverage requirements for MS4s located outside of urbanized areas and serving 10,000 or more people may be waived if the following criterion is met:

The MS4 is not discharging pollutants which are the cause of the impairment to a water body designated by the department as impaired.

*f.* Should conditions under which the initial waiver was granted change, the waiver may be rescinded by the department and permit coverage may be required.

*g.* MS4 applications shall, at a minimum, demonstrate in what manner the applicant will develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. The manner in which the permittee will address the following items must be addressed in the application: public education and outreach on storm water impacts, public involvement and participation, illicit discharge detection and elimination, construction site storm water runoff control, postconstruction storm water management in new development and redevelopment, and pollution prevention for municipal operations. Measurable goals which the applicant intends to meet and dates by which the goals will be accomplished shall be included with the application.

**64.13(3)** Waivers for storm water discharge associated with small construction activity. The director may waive the otherwise applicable requirements in a general permit for storm water discharge from small construction activities as defined in 567—Chapter 60 when:

*a.* The value of the rainfall erosivity factor (“R” in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997; or

*b.* Storm water controls are not needed based on a TMDL approved or established by the EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutant(s) of concern includes sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity.

[ARC 7625B, IAB 3/11/09, effective 4/15/09]

**567—64.14(455B) Transfer of title and owner or operator address change.** If title to any disposal system or part thereof for which a permit has been issued under 567—64.2(455B), 567—64.3(455B) or 567—64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notifying the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within

30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.

**64.14(1)** *Permits issued under rule 567—64.2(455B), 567—64.3(455B), or 567—64.6(455B), except 64.6(1)“a”(5).* If title to any disposal system or part thereof for which a permit has been issued is transferred, the new owners shall be subject to all terms and conditions of the permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers and address changes must be reported to the department by mail.

**64.14(2)** *Permits issued under 64.6(1)“a”(5).* When the operator of a facility changes, the department must be notified of the transfer within 30 days. When a discharge is covered by the general permit, the operator of record shall be subject to all terms and conditions of the permit. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer. Whenever the address of the operator is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all transfers and address changes must be reported to the department by mail.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 9553B, IAB 6/15/11, effective 7/20/11]

Rules 567—64.3(455B) to 567—64.14(455B) are intended to implement Iowa Code section 455B.173.

**567—64.15(455B) General permits issued by the department.** The following is a list of general permits adopted by the department through the Administrative Procedure Act, Iowa Code chapter 17A, and the term of each permit.

**64.15(1)** Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, 2012, to October 1, 2017. Facilities assigned Standard Industrial Classification 1442, 2951, or 3273, and those facilities assigned Standard Industrial Classification 1422 or 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

**64.15(2)** Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, 2012, to October 1, 2017.

**64.15(3)** Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, 2012, to October 1, 2017. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classification 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

**64.15(4)** “Discharge from Private Sewage Disposal Systems,” NPDES General Permit No. 4, effective March 18, 2009, to March 17, 2011.

**64.15(5)** “Discharge from Mining and Processing Facilities,” NPDES General Permit No. 5, effective July 20, 2011.

**64.15(6)** “Discharge Associated with Well Construction Activities,” NPDES General Permit No. 6, effective March 17, 2010, to February 28, 2015.

**64.15(7)** “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” NPDES General Permit No. 7, effective March 30, 2011, to March 29, 2016.

[ARC 7569B, IAB 2/11/09, effective 3/18/09; ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 9553B, IAB 6/15/11, effective 7/20/11; ARC 0261C, IAB 8/8/12, effective 10/1/12]

**567—64.16(455B) Fees.**

**64.16(1)** A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee or a permit fee or both as specified in 64.16(3). Certain individual facilities shall also be required to submit annual fees as specified in 64.16(3) “b.” Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. For a construction permit, an application fee must be submitted with the application. For General Permits Nos. 1, 2, 3 and 5, the applicant has the option of paying an annual permit fee or a multiyear permit fee at the time the Notice of Intent for coverage is submitted.

For individual storm water only permits, a one-time, multiyear permit fee must be submitted at the time of application. A storm water only permit is defined as an NPDES permit that authorizes the discharge of only storm water and any allowable non-storm water as defined in the permit. For all other non-storm water NPDES permits and operation permits, the applicant must submit an application fee at the time of application and the appropriate annual fee on a yearly basis. A non-storm water NPDES permit is defined as any individual NPDES permit or operation permit issued to a municipality, industry, semipublic entity, or animal feeding operation that is not an individual storm water only permit. If a facility needs coverage under more than one NPDES permit, fees for each permit must be submitted appropriately.

Fees are nontransferable. If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate fee at the time of application renders the application incomplete, and the department shall suspend processing of the application until the fee is received. Failure to submit the appropriate annual fee may result in revocation or suspension of the permit as noted in 64.3(11) “f.”

**64.16(2)** Payment of fees. Fees shall be paid by check or money order made payable to the “Iowa Department of Natural Resources.”

For facilities needing coverage under both a storm water only permit and a non-storm water NPDES permit, separate payments shall be made according to the fee schedule in 64.16(3).

**64.16(3)** Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES general permits, the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee . . . . . \$175(per year)

or

Five-year Permit Fee . . . . . \$700

Four-year Permit Fee . . . . . \$525

Three-year Permit Fee . . . . . \$350

All fees are to be submitted with the Notice of Intent for coverage under the general permit.

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) Discharge from Private Sewage Disposal Systems, NPDES Permit No. 4. No fees shall be assessed.

(5) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5.

Annual Permit Fee . . . . .	\$125 (per year)
or	
Five-year Permit Fee . . . . .	\$500
Four-year Permit Fee . . . . .	\$400
Three-year Permit Fee . . . . .	\$300

New facilities seeking General Permit No. 5 coverage shall submit fees with the Notice of Intent for coverage. Maximum coverage is for five years. Coverage may also be obtained for four years, three years, or one year, as shown in the fee schedule above. Existing facilities shall submit annual fees by August 30 of every year, unless a multiyear fee payment was received in an earlier year. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

*b.* Individual NPDES and operation permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For permits that authorize the discharge of only storm water associated with industrial activity and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

(2) For permits that authorize the discharge of only storm water from municipal separate storm sewer systems and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

(3) For operation and non-storm water NPDES permits not subject to subparagraphs (1) and (2), a single application fee of \$85 as established in Iowa Code section 455B.197 is due at the time of application. The application fee is to be submitted with the application forms (as required by 567—Chapter 60) at the time of a new application, renewal application, or amendment application. Before an approved amendment request submitted by a facility holding a non-storm water NPDES permit can be processed by the department, the application fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits when an amendment request is initiated by the director, when the requested amendment will correct an error in the permit, or when there is a transfer of title or change in the address of the owner as noted in 567—64.14(455B).

(4) For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an annual fee as established in Iowa Code section 455B.197 is due by August 30 of each year.

(5) For every municipal water treatment facility with a non-storm water NPDES permit, no fee is charged (as established in Iowa Code section 455B.197).

(6) For a new facility, an annual fee as established in Iowa Code section 455B.197 is due 30 days after the new permit is issued.

*c.* Wastewater construction permit fees. A single construction permit fee as established in Iowa Code section 455B.197 is due at the time of construction permit application submission.

**64.16(4)** Fee refunds for storm water general permit coverage—pilot project. Rescinded IAB 10/16/02, effective 11/20/02.

**64.16(5)** “Discharge Associated with Well Construction Activities,” NPDES General Permit No. 6. No fees shall be assessed.

**64.16(6)** “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” NPDES General Permit No. 7. No fees shall be assessed.

[Editorial change: IAC Supplement 2/11/09; **ARC 7625B**, IAB 3/11/09, effective 4/15/09; **ARC 8520B**, IAB 2/10/10, effective 3/17/10; **ARC 9365B**, IAB 2/9/11, effective 3/30/11; **ARC 9553B**, IAB 6/15/11, effective 7/20/11]

**567—64.17(455B) Validity of rules.** If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

**567—64.18(455B) Applicability.** This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, if an animal feeding operation is required to apply for and obtain an NPDES permit, the provisions of this chapter relating to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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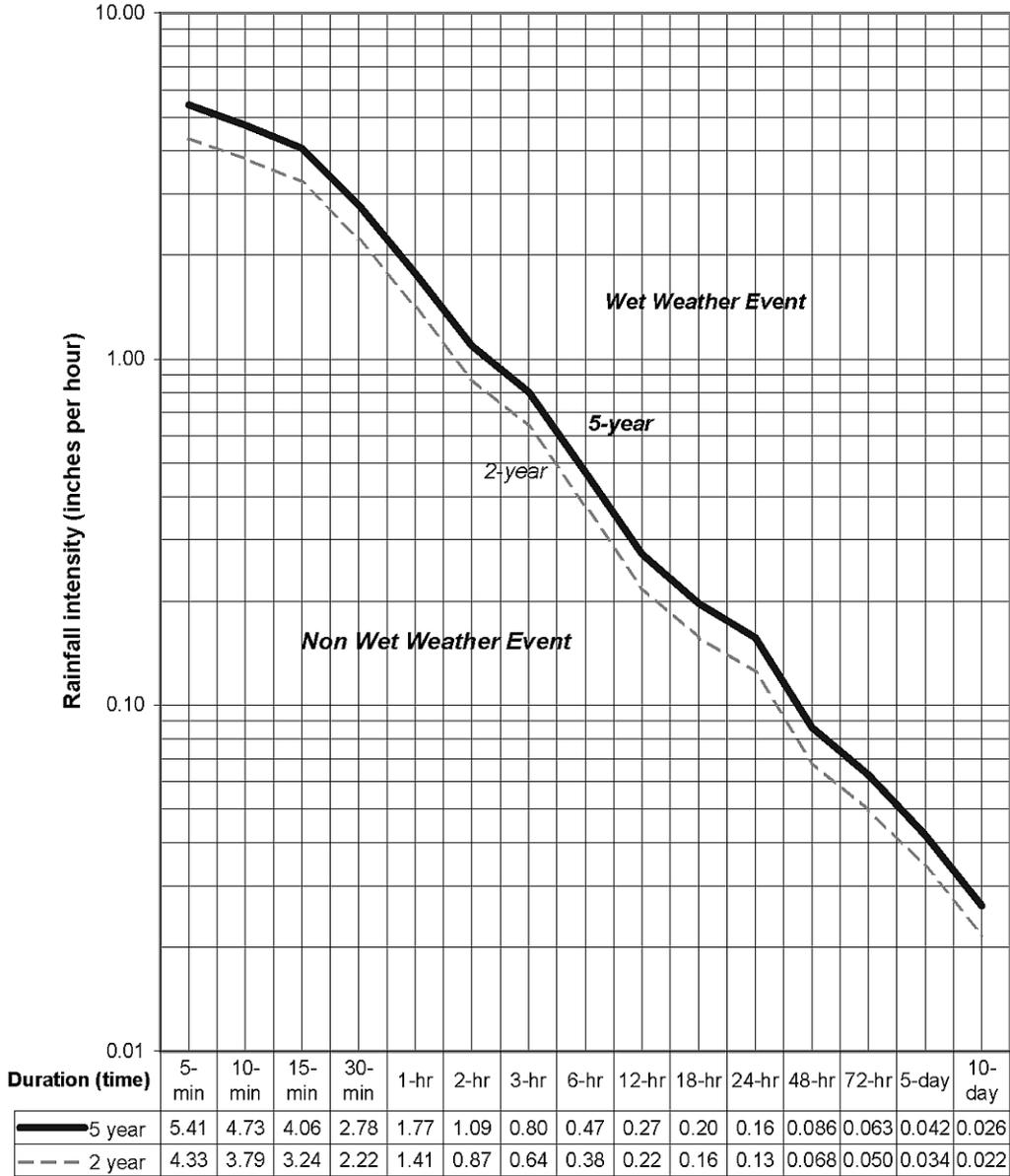
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<sup>1</sup> Effective date of 64.2(9)“c” delayed 70 days by the Administrative Rules Review Committee. The 70-day delay of effective date of 64.2(9)“c” was lifted by the Administrative Rules Review Committee on 7/31/86.

### APPENDIX A Rainfall Intensity - Duration - Frequency Curve (5 and 2 year Return Intervals)

Data Source: Rainfall Frequency Atlas of the Midwest, Illinois State Water Survey, 1992.



Rainfall intensity data points (inches per hour)

[ARC 7625B, IAB 3/11/09, effective 4/15/09]



**DENTAL BOARD[650]**

[Prior to 5/18/88, Dental Examiners, Board of[320]]

TITLE I  
*GENERAL PROVISIONS*CHAPTER 1  
ADMINISTRATION

- 1.1(153) Definitions
- 1.2(17A,147,153,272C) Purpose of the board
- 1.3(17A,147,153) Organization of the board
- 1.4(153) Organization of the dental hygiene committee
- 1.5(17A,153) Information
- 1.6(17A,147,153) Meetings

CHAPTERS 2 to 4  
ReservedTITLE II  
*ADMINISTRATION*CHAPTER 5  
ReservedCHAPTER 6  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

- 6.1(153,147,22) Definitions
- 6.3(153,147,22) Requests for access to records
- 6.6(153,147,22) Procedure by which additions, dissents, or objections may be entered into certain records
- 6.9(153,147,22) Disclosures without the consent of the subject
- 6.10(153,147,22) Routine use
- 6.11(153,147,22) Consensual disclosure of confidential records
- 6.12(153,147,22) Release to subject
- 6.13(153,147,22) Availability of records
- 6.14(153,147,22) Personally identifiable information
- 6.15(153,147,22) Other groups of records
- 6.16(153,147,22) Data processing system
- 6.17(153,147,22) Purpose and scope

CHAPTER 7  
RULES

- 7.1(17A,147,153) Petition for rule making
- 7.2(17A,147,153) Oral presentations for rule making
- 7.3 Reserved
- 7.4(17A,147,153) Waivers
- 7.5(17A,147,153) Sample petition for waiver

CHAPTER 8  
SALE OF GOODS AND SERVICES

- 8.1(68B) Selling of goods or services by members of the board
- 8.2(68B) Conditions of consent for members

CHAPTER 9  
DECLARATORY ORDERS

9.1(17A)	Petition for declaratory order
9.2(17A)	Notice of petition
9.3(17A)	Intervention
9.4(17A)	Briefs
9.5(17A)	Inquiries
9.6(17A)	Service and filing of petitions and other papers
9.7(17A)	Consideration
9.8(17A)	Action on petition
9.9(17A)	Refusal to issue order
9.10(17A)	Contents of declaratory order—effective date
9.11(17A)	Copies of orders
9.12(17A)	Effect of a declaratory order

TITLE III  
*LICENSING*

CHAPTER 10  
GENERAL REQUIREMENTS

10.1(153)	Licensed or registered personnel
10.2(147,153)	Display of license, registration, permit, and renewal
10.3(153)	Authorized practice of a dental hygienist
10.4(153)	Unauthorized practice of a dental hygienist
10.5(153)	Public health supervision allowed
10.6(147,153,272C)	Other requirements

CHAPTER 11  
LICENSURE TO PRACTICE DENTISTRY OR DENTAL HYGIENE

11.1(147,153)	Applicant responsibilities
11.2(147,153)	Dental licensure by examination
11.3(153)	Dental licensure by credentials
11.4(153)	Graduates of foreign dental schools
11.5(147,153)	Dental hygiene licensure by examination
11.6(153)	Dental hygiene licensure by credentials
11.7(147,153)	Dental hygiene application for local anesthesia permit
11.8(147,153)	Review of applications
11.9(147,153)	Grounds for denial of application
11.10(147)	Denial of licensure—appeal procedure
11.11(252J,261)	Receipt of certificate of noncompliance

CHAPTER 12  
DENTAL AND DENTAL HYGIENE EXAMINATIONS

12.1(147,153)	Clinical examination procedure for dentistry
12.2(147,153)	System of retaking dental examinations
12.3(147,153)	Clinical examination procedure for dental hygiene
12.4(147,153)	System of retaking dental hygiene examinations

CHAPTER 13  
SPECIAL LICENSES

13.1(153)	Resident license
13.2(153)	Dental college and dental hygiene program faculty permits
13.3(153)	Temporary permit

CHAPTER 14  
RENEWAL AND REINSTATEMENT

- 14.1(147,153,272C) Renewal of license to practice dentistry or dental hygiene
- 14.2(153) Renewal of registration as a dental assistant
- 14.3(136C,153) Renewal of dental assistant radiography qualification
- 14.4(147,153,272C) Grounds for nonrenewal
- 14.5(147,153,272C) Late renewal
- 14.6(147,153,272C) Reinstatement of a lapsed license or registration
- 14.7(136C,153) Reinstatement of lapsed radiography qualification

CHAPTER 15  
FEES

- 15.1(147,153) Establishment of fees
- 15.2(147,153) Definitions
- 15.3(153) Application fees
- 15.4(153) Renewal fees
- 15.5(153) Late renewal fees
- 15.6(147,153) Reinstatement fees
- 15.7(153) Miscellaneous fees
- 15.8(153) Continuing education fees
- 15.9(153) Facility inspection fee
- 15.10(22,147,153) Public records
- 15.11(22,147,153) Purchase of a mailing list or data list
- 15.12(147,153) Returned checks
- 15.13(147,153,272C) Copies of the laws and rules
- 15.14(17A,147,153,272C) Waiver prohibited

CHAPTER 16  
PRESCRIBING, ADMINISTERING, AND DISPENSING DRUGS

- 16.1(124,153,155A) Definitions
- 16.2(153) Scope of authority
- 16.3(153) Purchasing, administering, and dispensing of controlled substances
- 16.4(153) Dispensing—requirements for containers and labeling
- 16.5(153) Identifying information on prescriptions
- 16.6(153) Transmission of prescriptions
- 16.7(153) Emergency prescriptions

CHAPTERS 17 to 19  
Reserved

TITLE IV  
*AUXILIARY PERSONNEL*

CHAPTER 20  
DENTAL ASSISTANTS

- 20.1(153) Registration required
- 20.2(153) Definitions
- 20.3(153) Scope of practice
- 20.4(153) Categories of dental assistants
- 20.5(153) Registration requirements prior to July 2, 2001
- 20.6(153) Registration requirements after July 1, 2001
- 20.7(153) Registration denial
- 20.8(147,153) Denial of registration—appeal procedure
- 20.9(153) Examination requirements

20.10(153)	System of retaking dental assistant examinations
20.11(153)	Continuing education
20.12(252J,261)	Receipt of certificate of noncompliance
20.13(153)	Unlawful practice
20.14(153)	Advertising and soliciting of dental services prohibited
20.15(153)	Expanded function training approval

## CHAPTER 21

## DENTAL LABORATORY TECHNICIAN

21.1(153)	Definition
21.2(153)	Unlawful practice by dental laboratory technician
21.3(153)	Advertising and soliciting dental services prohibited

## CHAPTER 22

## DENTAL ASSISTANT RADIOGRAPHY QUALIFICATION

22.1(136C,153)	Qualification required
22.2(136C,153)	Definitions
22.3(136C,153)	Exemptions
22.4(136C,153)	Application requirements for dental radiography qualification
22.5(136C,153)	Examination requirements
22.6(136C,153)	Penalties

## CHAPTERS 23 and 24

## Reserved

TITLE V  
*PROFESSIONAL STANDARDS*

## CHAPTER 25

## CONTINUING EDUCATION

25.1(153)	Definitions
25.2(153)	Continuing education requirements
25.3(153)	Approval of programs and activities
25.4(153)	Approval of sponsors
25.5(153)	Review of programs or sponsors
25.6(153)	Hearings
25.7(153)	Extensions and exemptions
25.8(153)	Exemptions for inactive practitioners
25.9(153)	Reinstatement of inactive practitioners
25.10(153)	Noncompliance with continuing dental education requirements
25.11(153)	Dental hygiene continuing education

## CHAPTER 26

## ADVERTISING

26.1(153)	General
26.2(153)	Requirements
26.3(153)	Fees
26.4(153)	Public representation
26.5(153)	Responsibility
26.6(153)	Advertisement records

CHAPTER 27  
STANDARDS OF PRACTICE AND  
PRINCIPLES OF PROFESSIONAL ETHICS

- 27.1(153) General
- 27.2(153,272C) Patient acceptance
- 27.3(153) Emergency service
- 27.4(153) Consultation and referral
- 27.5(153) Use of personnel
- 27.6(153) Evidence of incompetent treatment
- 27.7(153) Representation of care and fees
- 27.8(153) General practitioner announcement of services
- 27.9(153) Unethical and unprofessional conduct
- 27.10(153) Retirement or discontinuance of practice
- 27.11(153,272C) Record keeping
- 27.12(17A,147,153,272C) Waiver prohibited

CHAPTER 28  
DESIGNATION OF SPECIALTY

- 28.1(153) General review
- 28.2(153) Dental public health
- 28.3(153) Endodontics
- 28.4(153) Oral and maxillofacial pathology
- 28.5(153) Oral and maxillofacial surgery
- 28.6(153) Orthodontics and dentofacial orthopedics
- 28.7(153) Pediatric dentistry
- 28.8(153) Periodontics
- 28.9(153) Prosthodontics
- 28.10(153) Oral and maxillofacial radiology

CHAPTER 29  
SEDATION AND NITROUS OXIDE INHALATION ANALGESIA

- 29.1(153) Definitions
- 29.2(153) Prohibitions
- 29.3(153) Requirements for the issuance of deep sedation/general anesthesia permits
- 29.4(153) Requirements for the issuance of moderate sedation permits
- 29.5(153) Permit holders
- 29.6(153) Nitrous oxide inhalation analgesia
- 29.7(153) Minimal sedation
- 29.8(153) Noncompliance
- 29.9(153) Reporting of adverse occurrences related to sedation, nitrous oxide inhalation analgesia, and antianxiety premedication
- 29.10(153) Anesthesia credentials committee
- 29.11(153) Renewal
- 29.12(153) Rules for denial or nonrenewal
- 29.13(153) Record keeping

TITLE VI  
*PROFESSIONAL REGULATION*

CHAPTER 30  
DISCIPLINE

- 30.1(153) General
- 30.2(153) Methods of discipline
- 30.3(153) Discretion of board

- 30.4(147,153,272C) Grounds for discipline  
 30.5(153) Impaired practitioner review committee

CHAPTER 31  
 COMPLAINTS AND INVESTIGATIONS

- 31.1(272C) Complaint review  
 31.2(153) Form and content  
 31.3(153) Address  
 31.4(153) Investigation  
 31.5(153) Issuance of investigatory subpoenas  
 31.6(153) Board appearances  
 31.7(153) Peer review  
 31.8(272C) Duties of peer review committees  
 31.9(272C) Board review  
 31.10(272C) Confidentiality of investigative files  
 31.11(272C) Reporting of judgments or settlements  
 31.12(272C) Investigation of reports of judgments and settlements  
 31.13(272C) Mandatory reporting  
 31.14 Reserved  
 31.15(272C) Immunities

CHAPTER 32  
 MEDIATION OF DISPUTES

- 32.1(153) Definitions  
 32.2(153) Mediation authorized  
 32.3(153) Mediation process  
 32.4(153) Assignment of mediator  
 32.5(153) Cancellation  
 32.6(153) Mediation meetings  
 32.7(153) Mediation report  
 32.8(679) Mediation agreement  
 32.9(679) Mediation confidential  
 32.10(679) Mediator immunity

TITLES VII TO X

CHAPTER 33  
 CHILD SUPPORT NONCOMPLIANCE

- 33.1(252J,598) Definitions  
 33.2(252J,598) Issuance or renewal of a license or registration—denial  
 33.3(252J,598) Suspension or revocation of a license or registration

CHAPTER 34  
 STUDENT LOAN DEFAULT/NONCOMPLIANCE  
 WITH AGREEMENT FOR PAYMENT OF OBLIGATION

- 34.1(261) Definitions  
 34.2(261) Issuance or renewal of a license or registration—denial  
 34.3(261) Suspension or revocation of a license or registration

CHAPTER 35  
 IOWA PRACTITIONER REVIEW COMMITTEE

- 35.1(153,272C) Iowa practitioner review committee  
 35.2(272C) Board referrals to the Iowa practitioner review committee

CHAPTER 36  
NONPAYMENT OF STATE DEBT

36.1(272D)	Definitions
36.2(272D)	Issuance or renewal of a license—denial
36.3(272D)	Suspension or revocation of a license
36.4(272D)	Sharing of information

CHAPTERS 37 to 50  
Reserved

CHAPTER 51  
CONTESTED CASES

51.1(17A)	Scope and applicability
51.2(17A)	Definitions
51.3(17A)	Probable cause
51.4(17A)	Legal review
51.5(17A)	Time requirements
51.6(17A)	Statement of charges and notice of hearing
51.7(17A)	Legal representation
51.8(17A)	Presiding officer in a disciplinary contested case
51.9(17A)	Presiding officer in a nondisciplinary contested case
51.10(17A)	Disqualification
51.11(17A)	Consolidation—severance
51.12(17A)	Pleadings
51.13(17A)	Service and filing
51.14(17A)	Discovery
51.15(17A,272C)	Issuance of subpoenas in a contested case
51.16(17A)	Motions
51.17(17A)	Prehearing conference
51.18(17A)	Continuances
51.19(17A)	Settlements
51.20(17A)	Hearing procedures
51.21(17A)	Evidence
51.22(17A)	Default
51.23(17A)	Ex parte communication
51.24(17A)	Recording costs
51.25(17A)	Interlocutory appeals
51.26(17A)	Proposed and final decision
51.27(17A)	Applications for rehearing
51.28(17A)	Stays of board actions
51.29(17A)	No factual dispute contested cases
51.30(17A)	Emergency adjudicative proceedings
51.31(153)	Judicial review
51.32(17A)	Notification of decision
51.33(17A)	Publicizing disciplinary action
51.34(153)	Reinstatement
51.35(272C)	Disciplinary hearings—fees and costs



TITLE III  
LICENSING

## CHAPTER 10

## GENERAL REQUIREMENTS

[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—10.1(153) Licensed or registered personnel.** Persons engaged in the practice of dentistry in Iowa must be licensed by the board as a dentist, and persons performing services under Iowa Code section 153.15 must be licensed by the board as a dental hygienist. Persons engaged in the practice of dental assisting must be registered by the board pursuant to 650—Chapter 20.

This rule is intended to implement Iowa Code sections 147.2 and 153.17.

**650—10.2(147,153) Display of license, registration, permit, and renewal.** The license to practice dentistry or dental hygiene or the registration as a dental assistant and the current renewal must be prominently displayed by the licensee or registrant at each permanent practice location. A dentist who holds a permit to administer deep sedation/general anesthesia or conscious sedation, or a dental hygienist who holds a permit to administer local anesthesia, shall also prominently display the permit and the current renewal at each permanent practice location.

**10.2(1)** Additional certificates shall be obtained from the board whenever a licensee or registrant practices at more than one address.

**10.2(2)** Duplicate licenses, certificates of registration, or permits shall be issued by the board upon satisfactory proof of loss or destruction of the original license, certificate of registration, or permit.

This rule is intended to implement Iowa Code sections 147.7, 147.10 and 147.80(17).

**650—10.3(153) Authorized practice of a dental hygienist.**

**10.3(1)** “Practice of dental hygiene” as defined in Iowa Code section 153.15 means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene procedures which are delegated by and under the supervision of a dentist licensed pursuant to Iowa Code chapter 153.

*a.* Educational. Assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups; conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.

*b.* Therapeutic. Identifying and evaluating factors which indicate the need for and performing (1) oral prophylaxis, which includes supragingival and subgingival debridement of plaque, and detection and removal of calculus with instruments or any other devices; (2) periodontal scaling and root planing; (3) removing and polishing hardened excess restorative material; (4) administering local anesthesia with the proper permit; (5) administering nitrous oxide inhalation analgesia in accordance with 650—subrules 29.6(4) and 29.6(5); (6) applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medicaments or therapies for the treatment of periodontal disease and caries.

*c.* Preventive. Applying pit and fissure sealants and other medications or methods for caries and periodontal disease control; organizing and administering fluoride rinse or sealant programs.

*d.* Diagnostic. Reviewing medical and dental health histories; performing oral inspection; indexing dental and periodontal disease; making occlusal registrations for mounting study casts; testing pulp vitality; analyzing dietary surveys.

*e.* The following services may only be delegated by a dentist to a dental hygienist: administration of local anesthesia, placement of sealants, and the removal of any plaque, stain, calculus, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish.

**10.3(2)** All authorized services provided by a dental hygienist shall be performed under the general, direct, or public health supervision of a dentist currently licensed in the state of Iowa in accordance with 650—1.1(153) and 650—10.5(153).

**10.3(3)** Under the general or public health supervision of a dentist, a dental hygienist may provide educational services, assessment, screening, or data collection for the preparation of preliminary written records for evaluation by a licensed dentist. A dentist is not required to examine a patient prior to the provision of these dental hygiene services.

**10.3(4)** The administration of local anesthesia or nitrous oxide inhalation analgesia shall only be provided under the direct supervision of a dentist.

**10.3(5)** All other authorized services provided by a dental hygienist to a new patient shall be provided under the direct or public health supervision of a dentist. An examination by the dentist must take place during an initial visit by a new patient, except when hygiene services are provided under public health supervision.

**10.3(6)** Subsequent examination and monitoring of the patient, including definitive diagnosis and treatment planning, is the responsibility of the dentist and shall be carried out in a reasonable period of time in accordance with the professional judgment of the dentist based upon the individual needs of the patient.

**10.3(7)** General supervision shall not preclude the use of direct supervision when in the professional judgment of the dentist such supervision is necessary to meet the individual needs of the patient.

This rule is intended to implement Iowa Code section 153.15.

**650—10.4(153) Unauthorized practice of a dental hygienist.** A dental hygienist who assists a dentist in practicing dentistry in any capacity other than as an employee or independent contractor supervised by a licensed dentist or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor, director, or supervisor of a practice as a guise or subterfuge to enable such dental hygienist to engage in the practice of dentistry or dental hygiene or who renders dental service(s) directly or indirectly on or for members of the public other than as an employee or independent contractor supervised by a licensed dentist shall be deemed to be practicing illegally.

**10.4(1)** The unauthorized practice of dental hygiene means allowing a person not licensed in dentistry or dental hygiene to perform dental hygiene services authorized in Iowa Code section 153.15 and rule 650—10.3(153).

**10.4(2)** The unauthorized practice of dental hygiene also means the performance of services by a dental hygienist that exceeds the scope of practice granted in Iowa Code section 153.15.

**10.4(3)** A dental hygienist shall not practice independent from the supervision of a dentist nor shall a dental hygienist establish or maintain an office or other workplace separate or independent from the office or other workplace in which the supervision of a dentist is provided.

This rule is intended to implement Iowa Code sections 147.10, 147.57 and 153.15.

**650—10.5(153) Public health supervision allowed.** A dentist who meets the requirements of this rule may provide public health supervision to a dental hygienist if the dentist has an active Iowa license and the services are provided in public health settings.

**10.5(1) Public health settings defined.** For the purposes of this rule, public health settings are limited to schools; Head Start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; nursing facilities; and federal, state, or local public health programs.

**10.5(2) Public health supervision defined.** “Public health supervision” means all of the following:

*a.* The dentist authorizes and delegates the services provided by a dental hygienist to a patient in a public health setting, with the exception that hygiene services may be rendered without the patient’s first being examined by a licensed dentist;

*b.* The dentist is not required to provide future dental treatment to patients served under public health supervision;

*c.* The dentist and the dental hygienist have entered into a written supervision agreement that details the responsibilities of each licensee, as specified in subrule 10.5(3); and

*d.* The dental hygienist has an active Iowa license with a minimum of three years of clinical practice experience.

**10.5(3) Licensee responsibilities.** When working together in a public health supervision relationship, a dentist and dental hygienist shall enter into a written agreement that specifies the following responsibilities.

*a.* The dentist providing public health supervision must:

(1) Be available to provide communication and consultation with the dental hygienist;

(2) Have age- and procedure-specific standing orders for the performance of dental hygiene services. Those standing orders must include consideration for medically compromised patients and medical conditions for which a dental evaluation must occur prior to the provision of dental hygiene services;

(3) Specify a period of time in which an examination by a dentist must occur prior to providing further hygiene services. However, this examination requirement does not apply to educational services, assessments, screenings, and fluoride if specified in the supervision agreement; and

(4) Specify the location or locations where the hygiene services will be provided under public health supervision.

*b.* A dental hygienist providing services under public health supervision may provide assessments; screenings; data collection; and educational, therapeutic, preventive, and diagnostic services as defined in rule 10.3(153), except for the administration of local anesthesia or nitrous oxide inhalation analgesia, and must:

(1) Maintain contact and communication with the dentist providing public health supervision;

(2) Practice according to age- and procedure-specific standing orders as directed by the supervising dentist, unless otherwise directed by the dentist for a specific patient;

(3) Provide to the patient, parent, or guardian a written plan for referral to a dentist and assessment of further dental treatment needs;

(4) Have each patient sign a consent form that notifies the patient that the services that will be received do not take the place of regular dental checkups at a dental office and are meant for people who otherwise would not have access to services; and

(5) Specify a procedure for creating and maintaining dental records for the patients that are treated by the dental hygienist, including where these records are to be located.

*c.* The written agreement for public health supervision must be maintained by the dentist and the dental hygienist and must be made available to the board upon request. The dentist and dental hygienist must review the agreement at least biennially.

*d.* A copy of the agreement shall be filed with the Oral Health Bureau, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

**10.5(4) Reporting requirements.** Each dental hygienist who has rendered services under public health supervision must complete a summary report at the completion of a program or, in the case of an ongoing program, at least annually. The report shall be filed with the oral health bureau of the Iowa department of public health on forms provided and include information related to the number of patients seen and services provided to enable the department to assess the impact of the program. The department will provide summary reports to the board on an annual basis.

This rule is intended to implement Iowa Code section 153.15.

[ARC 7767B, IAB 5/20/09, effective 6/24/09]

#### **650—10.6(147,153,272C) Other requirements.**

**10.6(1) Change of address or name.** Each person licensed or registered by the board must notify the board, by written correspondence or through the board's online system, of a change of legal name or address within 60 days of such change. Proof of a legal name change, such as a notarized copy of a marriage certificate, must accompany the request for a name change.

**10.6(2) Child and dependent adult abuse training.** Licensees or registrants who regularly examine, attend, counsel or treat children or adults in Iowa must obtain mandatory training in child and dependent adult abuse identification and reporting within six months of initial employment and subsequently every five years in accordance with 650—subrule 25.2(9).

**10.6(3) Reporting requirements.** Each licensee and registrant shall be responsible for reporting to the board, within 30 days, any of the following:

- a. Every adverse judgment in a professional malpractice action to which the licensee or registrant was a party.
- b. Every settlement of a claim against the licensee or registrant alleging malpractice.
- c. Any license or registration revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by the licensing authority.

This rule is intended to implement Iowa Code sections 147.9, 232.69, 235B.16 and 272C.9.  
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<sup>1</sup> Effective date of 10.3(1) delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held September 15, 1999.

†See HJR 2006 of 2006 Session of the Eighty-first General Assembly regarding nullification of subrule 10.6(4).

CHAPTER 11  
LICENSURE TO PRACTICE DENTISTRY OR DENTAL HYGIENE  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—11.1(147,153) Applicant responsibilities.** An applicant for dental or dental hygiene licensure bears full responsibility for each of the following:

1. Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information required to complete a license or permit application; and

2. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, prior professional experience, education, training, examination scores, and disciplinary history.

3. Submitting complete application materials. An application for a license, permit, or registration or reinstatement of a license or registration will be considered active for 180 days from the date the application is received. For purposes of establishing timely filing, the postmark on a paper submittal will be used, and for applications submitted online, the electronic timestamp will be deemed the date of filing. If the applicant does not submit all materials, including a completed fingerprint packet, within this time period or if the applicant does not meet the requirements for the license, permit, registration or reinstatement, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application and application fee.

[ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—11.2(147,153) Dental licensure by examination.**

**11.2(1)** Applications for licensure to practice dentistry in this state shall be made on the form provided by the board and must be complete and include required credentials and documents.

**11.2(2)** Applications for licensure must be filed with the board along with:

*a. Documentation of graduation from dental college.* Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board or satisfactory evidence of meeting the requirements specified in rule 650—11.4(153).

*b. Certification of good standing from dean or designee.* Certification by the dean or other authorized representative of the dental school that the applicant has been a student in good standing while attending that dental school.

*c. Evidence of good standing in each state where licensed.* If the applicant is a dentist licensed by another jurisdiction, the applicant shall furnish evidence that the applicant is a licensed dentist in good standing in those states in which the applicant is licensed.

*d. Documentation of passage of national dental examination.* Evidence of successful completion of the examination administered by the Joint Commission on National Dental Examinations. Any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this evidence.

*e. Documentation of passage of a regional clinical examination.*

(1) Successful passage of CRDTS. Evidence of having successfully completed in the last five years the examination administered by the Central Regional Dental Testing Service, Inc. (CRDTS).

(2) Special transition period for dentists passing WREB or ADEX examination prior to September 1, 2011. An applicant who has successfully taken and passed the WREB or ADEX examination within the five years prior to September 1, 2011, may apply for licensure by examination by submitting evidence of successful completion of the WREB or ADEX examination.

*f. Explanation of any legal or administrative actions.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

*g. Payment of application, fingerprint and background check fees.* The nonrefundable application fee, plus the fee for the evaluation of the fingerprint packet and the criminal history background checks

by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), as specified in 650—Chapter 15.

*h. Documentation of passage of jurisprudence examination.* Evidence of successful completion of the jurisprudence examination administered by the Iowa dental board.

*i. Current CPR certification.* A statement:

(1) Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;

(2) Providing the expiration date of the CPR certificate; and

(3) Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

*j. Completed fingerprint packet.* A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

**11.2(3)** The board may require a personal appearance or any additional information relating to the character, education and experience of the applicant.

**11.2(4)** Applications must be signed and verified as to the truth of the statements contained therein.

This rule is intended to implement Iowa Code sections 147.3, 147.29, and 147.34.

[ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 9510B, IAB 5/18/11, effective 6/22/11; ARC 0265C, IAB 8/8/12, effective 9/12/12]

### **650—11.3(153) Dental licensure by credentials.**

**11.3(1)** Applications for licensure by credentials to practice dentistry in this state shall be made on the form provided by the board and must be completely answered, including required credentials and documents.

**11.3(2)** Applications must be filed with the board along with:

*a.* Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board or satisfactory evidence of meeting the requirements specified in rule 650—11.4(153).

*b.* Evidence of successful completion of the examination of the Joint Commission on National Dental Examinations or evidence of having passed a written examination during the last ten years that is comparable to the examination given by the Joint Commission on National Dental Examinations. Any dentist who has lawfully practiced dentistry in another state or territory for five years may be exempted from presenting this evidence.

*c.* A statement of any dental examinations taken by the applicant, with indication of pass/fail for each examination taken. Any dentist who has lawfully practiced dentistry in another state or territory for five or more years may be exempted from presenting this evidence.

*d.* Evidence of a current, valid license to practice dentistry in another state, territory or district of the United States issued under requirements equivalent or substantially equivalent to those of this state.

*e.* Evidence that the applicant has met at least one of the following:

(1) Passed an examination approved by the board in accordance with Iowa Code section 147.34(1) and administered by a regional or national testing service. The clinical examinations approved by the board are specified in 650—subrule 12.1(5); or

(2) Has for three consecutive years immediately prior to the filing of the application been in the lawful practice of dentistry in such other state, territory or district of the United States.

*f.* Evidence from the state board of dentistry, or equivalent authority, from each state in which applicant has been licensed to practice dentistry, that the applicant has not been the subject of final or pending disciplinary action.

*g.* A statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, complaints, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

*h.* The nonrefundable application fee for licensure by credentials, plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), as specified in 650—Chapter 15.

*i. Current CPR certification. A statement:*

- (1) Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;
- (2) Providing the expiration date of the CPR certificate; and
- (3) Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

*j. Evidence of successful completion of the jurisprudence examination administered by the Iowa dental board.*

*k. A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.*

**11.3(3)** The board may require a personal appearance or may require any additional information relating to the character, education, and experience of the applicant.

**11.3(4)** The board may also require such examinations as may be necessary to evaluate the applicant for licensure by credentials.

**11.3(5)** Applications must be signed and verified attesting to the truth of the statements contained therein.

This rule is intended to implement Iowa Code chapters 147 and 153.

[ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—11.4(153) Graduates of foreign dental schools.** In addition to meeting the other requirements for licensure specified in rule 650—11.2(147,153) or 650—11.3(153), an applicant for dental licensure who did not graduate with a DDS or DMD from an accredited dental college approved by the board must provide satisfactory evidence of meeting the following requirements.

**11.4(1)** The applicant must complete a full-time, undergraduate supplemental dental education program of at least two academic years at an accredited dental college. The undergraduate supplemental dental education program must provide didactic and clinical education to the level of a DDS or DMD graduate of the dental college.

**11.4(2)** The applicant must receive a dental diploma, degree or certificate from the accredited dental college upon successful completion of the program.

**11.4(3)** The applicant must present to the board the following documents:

- a.* An official transcript issued by the accredited dental college that verifies completion of all coursework requirements of the undergraduate supplemental dental education program;
- b.* A dental diploma, degree or certificate issued by the accredited dental college or a certified copy thereof;
- c.* A letter addressed to the board from the dean of the accredited dental college verifying that the applicant has successfully completed the requirements set forth in 11.4(1);
- d.* A final, official transcript verifying graduation from the foreign dental school at which the applicant originally obtained a dental degree. If the transcript is written in a language other than English, an original, official translation shall also be submitted; and
- e.* Verification from the appropriate governmental authority that the applicant was licensed or otherwise authorized by law to practice dentistry in the country in which the applicant received foreign dental school training and that no adverse action was taken against the license.

**11.4(4)** The applicant must demonstrate to the satisfaction of the board an ability to read, write, speak, understand, and be understood in the English language. The applicant may demonstrate English proficiency by submitting to the board proof of a passing score on one of the following examinations:

- a.* Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL or a minimum overall score of 213 on the computer-administered TOEFL.
- b.* Test of Spoken English (TSE) administered by the Educational Testing Service. A passing score on TSE is a minimum of 50.

This rule is intended to implement Iowa Code chapter 153.

**650—11.5(147,153) Dental hygiene licensure by examination.**

**11.5(1)** Applications for licensure to practice dental hygiene in this state shall be made on the form provided by the dental hygiene committee and must be completely answered, including required credentials and documents.

**11.5(2)** Applications for licensure must be filed with the dental hygiene committee along with:

*a. Documentation of graduation from dental hygiene school.* Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the dental hygiene committee.

*b. Certification of good standing from dean or designee.* Certification by the dean or other authorized representative of the school of dental hygiene that the applicant has been a student in good standing while attending that dental hygiene school.

*c. Evidence of good standing in each state where licensed.* If the applicant is licensed as a dental hygienist by another jurisdiction, the applicant shall furnish evidence from the appropriate examining board of that jurisdiction that the applicant is a licensed dental hygienist in good standing.

*d. Documentation of completion of national examination.* Evidence of successful completion of the examination administered by the Joint Commission on National Dental Examinations.

*e. Passage of regional clinical examination.*

(1) Successful passage of CRDTS. Evidence of having successfully completed in the last five years the examination administered by the Central Regional Dental Testing Service, Inc. (CRDTS).

(2) Special transition period for dental hygienists passing WREB examination prior to September 1, 2011. An applicant who has successfully taken and passed the WREB examination within the five years prior to September 1, 2011, may apply for licensure by examination by submitting evidence of successful completion of the WREB examination.

*f. Payment of application, fingerprint and background check fees.* The nonrefundable application fee, plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), as specified in 650—Chapter 15.

*g. Documentation of passage of jurisprudence examination.* Evidence of successful completion of the jurisprudence examination administered by the dental hygiene committee.

*h. Current CPR certification.* A statement:

(1) Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;

(2) Providing the expiration date of the CPR certificate; and

(3) Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

*i. Explanation of any legal or administrative actions.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

*j. Completed fingerprint packet.* A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

**11.5(3)** The dental hygiene committee may require a personal appearance or any additional information relating to the character, education and experience of the applicant.

**11.5(4)** Applications must be signed and verified as to the truth of the statements contained therein.

**11.5(5)** Following review by the dental hygiene committee, the committee shall make recommendation to the board regarding the issuance or denial of any license to practice dental hygiene. The board’s review of the dental hygiene committee recommendation is subject to 650—Chapter 1.

This rule is intended to implement Iowa Code chapters 147 and 153.

[ARC 7790B, IAB 5/20/09, effective 6/24/09; ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 9510B, IAB 5/18/11, effective 6/22/11; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—11.6(153) Dental hygiene licensure by credentials.** To be issued a license to practice dental hygiene in Iowa on the basis of credentials, an applicant shall meet the following requirements.

**11.6(1)** Applications for licensure by credentials to practice dental hygiene in this state shall be made on the form provided by the dental hygiene committee and must be completely answered, including required credentials and documents.

**11.6(2)** Applications must be filed with the dental hygiene committee along with:

*a.* Satisfactory evidence of graduation from an accredited school of dental hygiene approved by the dental hygiene committee.

*b.* Evidence of successful completion of the examination of the Joint Commission on National Dental Examinations or evidence of having passed a written examination that is comparable to the examination given by the Joint Commission on National Dental Examinations.

*c.* A statement of any dental hygiene examinations taken by the applicant, with indication of pass/fail for each examination taken. Any dental hygienist who has lawfully practiced dental hygiene in another state or territory for five or more years may be exempted from presenting this evidence.

*d.* Evidence of a current, valid license to practice dental hygiene in another state, territory or district of the United States issued under requirements equivalent or substantially equivalent to those of this state.

*e.* Evidence that the applicant has met at least one of the following:

(1) Passed an examination approved by the board in accordance with Iowa Code section 147.34(1) and administered by a regional or national testing service. The clinical examinations approved by the board are specified in 650—subrule 12.1(5).

(2) Has for three consecutive years immediately prior to the filing of the application been in the lawful practice of dental hygiene in such other state, territory or district of the United States.

*f.* Evidence from the state board of dentistry, or equivalent authority, in each state in which applicant has been licensed to practice dental hygiene, that the applicant has not been the subject of final or pending disciplinary action.

*g.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

*h.* The nonrefundable application fee for licensure by credentials, the initial licensure fee and the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), as specified in 650—Chapter 15.

*i.* A statement:

(1) Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;

(2) Providing the expiration date of the CPR certificate; and

(3) Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

*j.* Successful completion of the jurisprudence examination administered by the dental hygiene committee.

*k.* A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.

**11.6(3)** Applicant shall appear for a personal interview conducted by the dental hygiene committee or the board by request only.

**11.6(4)** The dental hygiene committee may also require such examinations as may be necessary to evaluate the applicant for licensure by credentials.

**11.6(5)** Applications must be signed and verified attesting to the truth of the statements contained therein.

**11.6(6)** Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance or denial of a dental hygiene license. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 1.

This rule is intended to implement Iowa Code section 147.80 and chapter 153.  
[ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—11.7(147,153) Dental hygiene application for local anesthesia permit.** A licensed dental hygienist may administer local anesthesia provided the following requirements are met:

1. The dental hygienist holds a current local anesthesia permit issued by the board of dental examiners.

2. The local anesthesia is prescribed by a licensed dentist.

3. The local anesthesia is administered under the direct supervision of a licensed dentist.

**11.7(1)** Application for permit. A dental hygienist shall make application for a permit to administer local anesthesia on the form approved by the dental hygiene committee and provide the following:

a. The fee for a permit to administer local anesthesia as specified in 650—Chapter 15; and

b. Evidence that formal training in the administration of local anesthesia has been completed within 12 months of the date of application. The formal training shall be approved by the dental hygiene committee and conducted by a school accredited by the American Dental Association Commission on Dental Education; or

c. Evidence of completion of formal training in the administration of local anesthesia approved by the dental hygiene committee and documented evidence of ongoing practice in the administration of local anesthesia in another state or jurisdiction that authorizes a dental hygienist to administer local anesthesia.

**11.7(2)** Permit renewal. The permit shall expire on August 31 of every odd-numbered year. To renew the permit, the dental hygienist must:

a. At the time of renewal, document evidence of holding an active Iowa dental hygiene license.

b. Submit the application fee for renewal of the permit as specified in 650—Chapter 15.

**11.7(3)** Failure to meet the requirements for renewal shall cause the permit to lapse and become invalid.

**11.7(4)** A permit that has been lapsed for two years or less may be reinstated upon the permit holder's application for reinstatement and payment of the reinstatement fee as specified in 650—Chapter 15. A permit that has been lapsed for more than two years may be reinstated upon application for reinstatement, documentation of meeting the requirements of 11.7(1) "b" or "c," and payment of the reinstatement fee as specified in 650—Chapter 15.

This rule is intended to implement Iowa Code sections 147.10 and 147.80 and chapter 153.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—11.8(147,153) Review of applications.** Upon receipt of a completed application, the executive director as authorized by the board has discretion to:

1. Authorize the issuance of the license, permit, or registration.

2. Refer the license, permit, or registration application to the license committee for review and consideration when the executive director determines that matters including, but not limited to, prior criminal history, chemical dependence, competency, physical or psychological illness, malpractice claims or settlements, or professional disciplinary history are relevant in determining the applicants' qualifications for license, permit, or registration.

**11.8(1)** Following review and consideration of a license, permit, or registration application referred by the executive director, the license committee may at its discretion:

a. Recommend to the board issuance of the license, permit, or registration.

b. Recommend to the board denial of the license, permit, or registration.

c. Recommend to the board issuance of the license, permit, or registration under certain terms and conditions or with certain restrictions.

d. Refer the license, permit, or registration application to the board for review and consideration without recommendation.

**11.8(2)** Following review and consideration of a license, permit, or registration application referred by the license committee the board shall:

- a. Authorize the issuance of the license, permit, or registration,
- b. Deny the issuance of the license, permit, or registration, or
- c. Authorize the issuance of the license, permit, or registration under certain terms and conditions or with certain restrictions.

**11.8(3)** The license committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

**11.8(4)** The license committee or board may defer final action on an application if there is an investigation or disciplinary action pending against an applicant, who may otherwise meet the requirements for license, permit, or registration, until such time as the committee or board is satisfied that licensure or registration of the applicant poses no risk to the health and safety of Iowans.

**11.8(5)** The dental hygiene committee shall be responsible for reviewing any applications submitted by a dental hygienist that require review in accordance with this rule. Following review by the dental hygiene committee, the committee shall make a recommendation to the board regarding issuance of the license or permit. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 1.

**11.8(6)** An application for a license, permit, or reinstatement of a license will be considered complete prior to receipt of the criminal history background check on the applicant by the FBI for purposes of review and consideration by the executive director, the license committee, or the board. However, an applicant is required to submit an additional completed fingerprint packet and fee within 30 days of a request by the board if an earlier fingerprint submission has been determined to be unacceptable by the DCI or FBI.

**650—11.9(147,153) Grounds for denial of application.** The board may deny an application for license or permit for any of the following reasons:

1. Failure to meet the requirements for license or permit as specified in these rules.
2. Failure to provide accurate and truthful information, or the omission of material information.
3. Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended.

This rule is intended to implement Iowa Code section 147.4.

**650—11.10(147) Denial of licensure—appeal procedure.**

**11.10(1) Preliminary notice of denial.** Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

**11.10(2) Appeal procedure.** An applicant who has received a preliminary notice of denial may appeal the notice and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The request is deemed filed on the date it is received in the board office. The request shall provide the applicant's current address, specify the factual or legal errors in the preliminary notice of denial, indicate if the applicant wants an evidentiary hearing, and provide any additional written information or documents in support of licensure.

**11.10(3) Hearing.** If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with 650—51.20(17A). License denial hearings are open to the public. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.

a. The applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

b. The board, after a hearing on license denial, may grant the license, grant the license with restrictions, or deny the license. The board shall state the reasons for its final decision, which is a public record.

c. Judicial review of a final order of the board to deny a license, or to issue a license with restrictions, may be sought in accordance with the provisions of Iowa Code section 17A.19.

**11.10(4) Finality.** If an applicant does not appeal a preliminary notice of denial, the preliminary notice of denial automatically becomes final and a notice of denial will be issued. The final notice of denial is a public record.

**11.10(5) Failure to pursue appeal.** If an applicant appeals a preliminary notice of denial in accordance with 11.10(2), but the applicant fails to pursue that appeal to a final decision within six months from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 14 days after the written notice is sent. Upon dismissal of an appeal, the preliminary notice of denial becomes final.

This rule is intended to implement Iowa Code sections 147.3, 147.4 and 147.29.  
[ARC 7789B, IAB 5/20/09, effective 6/24/09]

**650—11.11(252J,261) Receipt of certificate of noncompliance.** The board shall consider the receipt of a certificate of noncompliance from the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127 and 650—Chapter 34 of these rules or receipt of a certificate of noncompliance of a support order from the child support recovery unit pursuant to Iowa Code chapter 252J and 650—Chapter 33 of these rules. License denial shall follow the procedures in the statutes and board rules as set forth in this rule.

This rule is intended to implement Iowa Code chapter 252J and sections 261.121 to 261.127.

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CHAPTER 12  
DENTAL AND DENTAL HYGIENE EXAMINATIONS  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—12.1(147,153) Clinical examination procedure for dentistry.**

**12.1(1) Completion of regional clinical examination required.**

*a. CRDTS accepted for licensure by examination.* To meet the requirements for dental licensure by examination, applicants shall complete the examination administered by the Central Regional Dental Testing Service, Inc. (CRDTS).

*b. Special transition period for dentists passing WREB or ADEX examination prior to September 1, 2011.* An applicant who has successfully passed the WREB or ADEX examination prior to September 1, 2011, may apply for licensure by examination.

**12.1(2) Compliance with testing requirements and procedures.**

*a. CRDTS.* Examinees shall meet the requirements for testing and follow the procedures established by the Central Regional Dental Testing Service, Inc.

*b. Special transition period for dentists passing WREB or ADEX examination prior to September 1, 2011.* Examinees who have completed the WREB or ADEX examination prior to September 1, 2011, shall meet the requirements for testing and follow the procedures established by WREB or ADEX.

**12.1(3) Scoring requirements.**

*a.* Prior to April 1, 1995, the examinee must attain an average grade of not less than 70 percent on each clinical portion of the examination and 70 percent on the written portion of the examination.

*b.* Between April 1, 1995, and December 31, 2000, the examinee must attain an average grade of not less than 75 percent on each clinical portion of the examination and 75 percent on the written portion of the examination.

*c.* Between January 1, 2001, and June 22, 2011, the examinee must attain a comprehensive score that meets the standard for passing established by ADEX, CRDTS, or WREB.

*d.* Post-June 22, 2011, and special transition period.

(1) Effective June 22, 2011, the examinee must attain a comprehensive score that meets the standard for passing established by CRDTS.

(2) Special transition period for dentists passing WREB or ADEX. Examinees who successfully complete the WREB or ADEX examination by September 1, 2011, must attain a comprehensive score that meets the standard for passing established by WREB or ADEX.

**12.1(4) Compliance with performance clinical operations requirements.**

*a.* Each examinee shall be required to perform such clinical operations as may be required by the Central Regional Dental Testing Service, Inc. for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dentistry.

*b.* Special transition period for dentists passing WREB or ADEX. Examinees who successfully complete the WREB or ADEX examination by September 1, 2011, shall be required to perform such clinical operations as may be required by WREB or ADEX for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dentistry.

**12.1(5) Clinical examinations accepted for purposes of licensure by credentials.** The board is authorized by 2011 Iowa Code Supplement section 153.21 to establish the regional or national testing service examinations that will be accepted for purposes of licensure by credentials. The following regional examinations are approved by the board for purposes of application for licensure by credentials submitted pursuant to 650—Chapter 11: Central Regional Dental Testing Service, Inc. (CRDTS), Western Regional Examining Board, Inc. (WREB), Southern Regional Testing Agency (SRTA), North East Regional Board of Dental Examiners (NERB), and Council of Interstate Testing Agencies (CITA). [ARC 9510B, IAB 5/18/11, effective 6/22/11; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—12.2(147,153) System of retaking dental examinations.**

**12.2(1) Method of counting failures.**

*a.* Integrated format. For the purposes of counting examination failures, the board shall utilize the policies adopted by CRDTS. A dental examinee who has not passed all five parts of the integrated

examination format by June 30 following graduation from dental school shall have one examination failure recorded. The dental examinee must then retake all five parts of the examination in the traditional format.

*b.* Traditional format. For the purposes of counting examination failures, the board shall utilize the policies adopted by CRDTS. A dental examinee who fails one or more parts of the examination shall have one examination failure recorded. A dental examinee shall be required to retake only those parts of the examination that the examinee failed. A dental examinee who has not passed all five parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

*c.* A dental examinee who has two examination failures in the traditional format will be required to complete remedial education requirements set forth in subrule 12.2(2).

**12.2(2) Remedial education required prior to third examination.**

*a.* Prior to the third examination attempt, a dental examinee must submit proof of additional formal education or clinical experience approved in advance by the board.

*b.* A dental examinee shall be required to retake only those parts of the examination that the examinee failed. However, a dental examinee who has not passed all five parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

**12.2(3) Remedial education required prior to fourth examination.**

*a.* Prior to the fourth examination attempt, a dental examinee must submit proof of satisfactory completion of the equivalent of an additional senior year of an approved curriculum in dentistry at a university or school with an approved curriculum.

*b.* At the fourth examination, the dental examinee shall be required to retake only those parts of the examination that the examinee failed. However, a dental examinee who has not passed all five parts of the examination within the time frame specified by CRDTS shall be required to retake the entire examination.

**12.2(4) Subsequent failures.** For the purposes of additional study prior to retakes, the fifth examination will be considered the same as the third.

**12.2(5) Failures of other examinations.** If a dental examinee applies for the Central Regional Dental Testing Service, Inc., examination after having failed any other state or regional examination, the failure shall be considered a CRDTS failure for the purposes of retakes.

[ARC 9510B, IAB 5/18/11, effective 6/22/11]

**650—12.3(147,153) Clinical examination procedure for dental hygiene.**

**12.3(1) Completion of regional clinical examination required.**

*a.* CRDTS accepted for licensure by examination. To meet the requirements for dental hygiene licensure by examination, applicants shall complete the examination administered by the Central Regional Dental Testing Service, Inc.

*b.* Special transition period for dentists passing WREB examination prior to September 1, 2011. An applicant who has successfully passed the WREB examination prior to September 1, 2011, may apply for licensure by examination.

**12.3(2) Compliance with testing requirements and procedures.**

*a.* CRDTS. Examinees shall meet the requirements for testing and follow the procedures established by the Central Regional Dental Testing Service, Inc.

*b.* Special transition period for dentists passing WREB examination prior to September 1, 2011. Examinees who successfully complete the WREB examination prior to September 1, 2011, shall meet the requirements for testing and follow the procedures established by WREB.

**12.3(3) Scoring requirements.**

*a.* Prior to December 31, 2003, the examinee must attain an average grade of 70 percent on the examination.

*b.* Between January 1, 2004, and June 22, 2011, the examinee must attain a comprehensive score that meets the standard for passing established by CRDTS or WREB.

*c.* Post-June 22, 2011, and special transition period.

(1) Effective June 22, 2011, the examinee must attain a comprehensive score that meets the standard for passing established by CRDTS.

(2) Special transition period for dental hygienists passing WREB. Examinees who successfully complete the WREB examination by September 1, 2011, must attain a comprehensive score that meets the standard for passing established by WREB.

**12.3(4) *Practical demonstrations.*** Each examinee shall be required to perform such practical demonstrations as may be required by the Central Regional Dental Testing Service, Inc., for the purpose of sufficiently evaluating and testing the fitness of the examinee to practice dental hygiene.

**12.3(5) *Clinical examinations accepted for purposes of licensure by credentials.*** The board is authorized by 2011 Iowa Code Supplement section 153.21 to establish the regional or national testing service examinations that will be accepted for purposes of licensure by credentials. The following regional examinations are approved by the board for purposes of application for licensure by credentials submitted pursuant to 650—Chapter 11: Central Regional Dental Testing Service, Inc. (CRDTS), Western Regional Examining Board, Inc. (WREB), Southern Regional Testing Agency (SRTA), North East Regional Board of Dental Examiners (NERB), and Council of Interstate Testing Agencies (CITA). [ARC 7790B, IAB 5/20/09, effective 6/24/09; ARC 9510B, IAB 5/18/11, effective 6/22/11; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—12.4(147,153) System of retaking dental hygiene examinations.**

**12.4(1) *Method of counting failures.***

a. For the purposes of counting examination failures, the board shall utilize the policies adopted by CRDTS.

b. A dental hygiene examinee who fails the examination shall be required to retake the examination.

c. A dental hygiene examinee who has two examination failures will be required to complete the remedial education requirements set forth in subrule 12.4(2).

**12.4(2) *Remedial education required prior to third examination.*** Prior to the third examination attempt, a dental hygiene examinee must submit proof of a minimum of 40 hours of additional formal education or a minimum of 40 hours of clinical experience that is approved in advance by the dental hygiene committee.

**12.4(3) *Remedial education required prior to fourth examination.*** Prior to the fourth examination attempt, a dental hygiene examinee must submit proof of satisfactory completion of the equivalent of an additional semester of dental hygiene at a university or school approved by the dental hygiene committee.

**12.4(4) *Subsequent failures.*** For purposes of additional study prior to retakes, the fifth examination will be considered the same as the third.

**12.4(5) *Failures of other examinations.*** If a dental hygiene examinee applies for the Central Regional Dental Testing Service, Inc. examination after having failed any other state or regional examination, the failure shall be considered a CRDTS failure for the purposes of retakes. [ARC 7790B, IAB 5/20/09, effective 6/24/09; ARC 9510B, IAB 5/18/11, effective 6/22/11]

**650—12.5(153) Additional requirements.** Rescinded IAB 2/6/02, effective 3/13/02.

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CHAPTER 13  
SPECIAL LICENSES

[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—13.1(153) Resident license.**

**13.1(1)** A dentist or dental hygienist seeking permission to practice as a resident, intern or graduate student in a board-approved teaching or educational institution offering specialty oriented courses shall be required to make application to the board on official board forms and furnish to the board the following:

*a.* A signed written statement from the dean or designated administrative officer of the institution in which the applicant seeks to enroll.

*b.* A signed written statement of a dentist who holds an active Iowa license or faculty permit and who proposes to exercise supervision and direction over said applicant, specifying in general terms the time and manner thereof.

*c.* Satisfactory evidence of graduation from an accredited school of dentistry or other school approved by the board.

*d.* Such additional information as the board may deem necessary to enable it to determine the proficiency, character, education or experience of such applicant.

*e.* Applications must be signed and verified as to the truth of the statements contained therein, and all questions must be completely answered.

*f.* The appropriate fee as specified in 650—Chapter 15 of these rules.

**13.1(2)** If approved by the board, a resident license shall allow the licensee to serve as a resident, intern, or graduate student dentist or dental hygienist, under the supervision of a practitioner who holds an active Iowa license or faculty permit, at the University of Iowa College of Dentistry or at an institution approved by the board.

**13.1(3)** If a resident licensee leaves the service of such institution during the tenure of residency, internship or graduate study, the license shall be considered null and void and the authority granted by the board to the licensee shall be automatically canceled. The director of the resident training program shall notify the board within 30 days of the licensee's terminating from the program.

**13.1(4)** The resident license shall be valid for one year and may be renewed annually during such period of time as the dental resident is continuously enrolled in a graduate dental education program. A resident license issued or renewed on or after January 1, 2006, shall expire on the expected date of completion of the resident training program as indicated on the licensure or renewal application.

**13.1(5)** A resident license may be extended past the original expected completion date of the training program at the discretion of the board. A licensee who wishes to extend the expiration date of the license shall submit to the board office an extension application that includes a letter explaining the need for an extension, an extension fee in the amount specified in 650—Chapter 15, and a statement from the director of the resident training program attesting to the progress of the resident in the training program, the new expected date of completion of the program, and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

**13.1(6)** The director of the resident training program shall report annually on July 1 the progress of residents under the director's supervision and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action. The board shall notify the program directors of the reporting requirement at least 30 days prior to the deadline.

**13.1(7)** A resident licensee who changes resident training programs shall apply for a new resident license and also include a statement from the director of the applicant's most recent residency program documenting the applicant's progress in the program.

**13.1(8)** No examination or continuing education shall be required for this license.

**13.1(9)** The resident licensee shall be subject to all applicable provisions of the law and the rules of the board. Any violations of these laws or rules or the failure of the licensee to perform and progress

satisfactorily or receive effective supervision as determined by the board shall be grounds for revocation of the license after proper notice and hearing.

This rule is intended to implement Iowa Code section 153.22.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—13.2(153) Dental college and dental hygiene program faculty permits.**

**13.2(1)** The board may issue a faculty permit entitling the holder to practice dentistry or dental hygiene as a faculty member within the University of Iowa College of Dentistry or a dental hygiene program and affiliated teaching facilities.

**13.2(2)** The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the board or the dental hygiene committee those bona fide members of the college's or a dental hygiene program's faculty who are not licensed to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing duties in the college of dentistry or a dental hygiene program, make on official board forms written application to the board or the dental hygiene committee for a permit and shall provide the following:

*a.* The nonrefundable application fee, plus the fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), as specified in 650—Chapter 15.

*b.* Information regarding the professional qualifications and background of the applicant.

*c.* A completed fingerprint packet to facilitate the criminal history background checks by the DCI and FBI.

*d.* If the applicant is licensed by another jurisdiction, the applicant shall furnish evidence from the board of dental examiners of that jurisdiction that the applicant is licensed in good standing and has not been the subject of final or pending disciplinary action.

*e.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges, including the results of a self-query of the National Practitioners Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

*f.* A statement:

(1) Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a "hands-on" clinical component;

(2) Providing the expiration date of the CPR certificate; and

(3) Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

*g.* Such additional information as the board may deem necessary to enable it to determine the character, education or experience of such applicant.

*h.* Applications must be signed and verified as to the truth of the statements contained therein and include required credentials and documents, and all questions must be completely answered.

*i.* Evidence of successful completion of the jurisprudence examination administered by the Iowa dental board.

**13.2(3)** A faculty permit shall expire on August 31 of every even-numbered year and may, at the sole discretion of the board, be renewed on a biennial basis.

**13.2(4)** The appropriate fee as specified in 650—Chapter 15 of these rules shall be paid for renewal of the faculty permit. A faculty permit holder who fails to renew by the expiration date of the permit shall be assessed a late fee in accordance with 650—14.4(147,153,272C).

**13.2(5)** The faculty permit shall be valid only so long as the holder remains a member of the faculty of the college of dentistry or member of the faculty of a dental hygiene program in Iowa and shall subject the holder to all provisions of the law regulating the practice of dentistry and dental hygiene in this state.

**13.2(6)** Faculty permit holders are required to obtain 30 hours of continuing education in accordance with the guidelines in 650—Chapter 25 for renewal of the faculty permit.

**13.2(7)** To renew the permit, faculty permit holders shall submit a statement:

- a. Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;
- b. Providing the expiration date of the CPR certificate; and
- c. Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

**13.2(8)** Application for issuance of a dental hygiene program faculty permit shall be made to the dental hygiene committee for consideration and recommendation to the board pursuant to 650—Chapter 1.

This rule is intended to implement Iowa Code section 153.37.  
[ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—13.3(153) Temporary permit.** The board may issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene on a short-term basis in Iowa at a specific location or locations to fulfill an urgent need, to serve an educational purpose, or to provide volunteer services. A temporary permit may be granted on a case-by-case basis.

**13.3(1) General provisions.**

a. The temporary permit is intended for dentists and dental hygienists with short-term assignments in Iowa that fulfill an urgent need, serve an educational purpose, or provide volunteer services, and clearly have no long-term implications for licensure. If the need changes or if the permit holder wishes to continue in short-term assignments in other Iowa locations, the permit holder is expected to seek permanent licensure. A temporary permit is not meant as a way to practice before a permanent license is granted or as a means to practice because the applicant does not fulfill the requirements for permanent licensure.

b. The board may issue a temporary permit authorizing the permit holder to practice at a specific location or locations in Iowa for a specified period up to three months.

c. Following expiration of the permit, a permit holder shall be required to obtain a new temporary permit or a permanent license in order to practice dentistry or dental hygiene in Iowa.

d. A person may be issued not more than three temporary permits to fulfill an urgent need or serve an educational purpose.

e. The board may cancel a temporary permit if the permit holder has practiced outside the scope of the permit or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code chapters 147, 153, and 272C and 650—30.4(147,153,272C). When cancellation of a permit is proposed, the board shall promptly notify the permit holder by sending a statement of charges and notice of hearing by certified mail to the last-known address of the permit holder. The provisions of 650—Chapter 51 shall govern a contested case proceeding following notice of intent to cancel the permit.

f. A temporary permit shall be displayed in the primary location of practice.

g. A temporary permit holder shall notify the board by written correspondence or through the board’s online system of any change in name or mailing address within seven days of the change. A certified copy of a marriage license or a certified copy of court documents is required for proof of a name change.

**13.3(2) Eligibility for a temporary permit to fulfill an urgent need or serve an educational purpose.** An application for a temporary permit shall be filed on the form provided by the board and must be completely answered, including required credentials and documents. An applicant for a temporary permit may submit an application online or on a paper form. To be eligible for a temporary permit to fulfill an urgent need or serve an educational purpose, an applicant shall provide all of the following:

a. Satisfactory evidence of graduation with a DDS or DMD degree for applicants seeking a temporary permit to practice dentistry or satisfactory evidence of graduation from a dental hygiene school for applicants seeking a temporary permit to practice dental hygiene.

b. The nonrefundable application fee for a temporary permit to fulfill an urgent need or serve an educational purpose as specified in 650—Chapter 15.

c. A statement:

- (1) Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;
- (2) Providing the expiration date of the CPR certificate; and
- (3) Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

*d.* A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges against the applicant.

*e.* Certification from the state board of dentistry, or equivalent authority, from a state in which the applicant has been licensed for at least three years immediately preceding the date of application and evidence of having engaged in the practice of dentistry in that state for three years immediately preceding the date of application or evidence of three years of practice satisfactory to the board. The applicant must also provide evidence that the applicant has not been the subject of final or pending disciplinary action.

*f.* Evidence from the appropriate examining board from each jurisdiction in which the applicant has ever held a license. At least one license must be issued on the basis of clinical examination.

*g.* A request for the temporary permit from those individuals or organizations seeking the applicant’s services that establishes, to the board’s satisfaction, the justification for the temporary permit, the dates the applicant’s services are needed, and the location or locations where those services will be delivered.

**13.3(3)** Eligibility for a temporary permit to provide volunteer services.

*a.* A temporary permit to provide volunteer services is intended for dentists and dental hygienists who will provide volunteer services at a free or nonprofit dental clinic and who will not receive compensation for dental services provided. A temporary permit issued under this subrule shall be valid only at the location specified on the permit, which shall be a free clinic or a dental clinic for a nonprofit organization, as described under Section 501(c)(3) of the Internal Revenue Code.

*b.* An application for a temporary permit shall be filed on the form provided by the board and must be completely answered, including required credentials and documents. To be eligible for a temporary permit to provide volunteer services, an applicant shall provide all of the following:

(1) The nonrefundable application fee for a temporary permit to provide volunteer services as specified in 650—Chapter 15.

(2) A statement:

1. Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;

2. Providing the expiration date of the CPR certificate; and

3. Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

(3) A statement disclosing and explaining any disciplinary actions, investigations, complaints, malpractice claims, judgments, settlements, or criminal charges against the applicant.

(4) Evidence that the applicant holds an active, permanent license in good standing to practice in at least one United States jurisdiction and that no formal disciplinary action is pending or has ever been taken.

(5) Evidence from the appropriate examining board from each jurisdiction in which the applicant has ever held a license. At least one license must be issued on the basis of clinical examination.

(6) A request for the temporary permit from those individuals or organizations seeking the applicant’s services that establishes, to the board’s satisfaction, the justification for the temporary permit, the dates the applicant’s services are needed, and the location or locations where those services will be delivered.

(7) A statement from the applicant seeking the temporary permit that the applicant shall practice only in a free dental clinic or dental clinic for a nonprofit organization and that the applicant shall not receive compensation directly or indirectly for providing dental services.

**13.3(4)** Dental hygiene committee review. The dental hygiene committee shall make recommendations to the board regarding the issuance or denial of any temporary permit to practice

dental hygiene. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 1.

**13.3(5)** Denial of temporary permit. The board may deny a temporary permit in accordance with 650—11.9(147,153) or, at the sole discretion of the board, for failure to justify the need for a temporary permit. The procedure for appealing the denial of a permit is set forth in 650—11.10(147).

**13.3(6)** A temporary permit holder shall be subject to and follow all rules and state laws pertaining to the practice of dentistry and dental hygiene in this state.

This rule is intended to implement Iowa Code section 153.19.

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CHAPTER 14  
RENEWAL AND REINSTATEMENT  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—14.1(147,153,272C) Renewal of license to practice dentistry or dental hygiene.** A license to practice dentistry or a license to practice dental hygiene must be renewed prior to the expiration date of the license. Dental hygiene licenses expire on August 31 of every odd-numbered year. Dental licenses expire August 31 of every even-numbered year.

**14.1(1) Application renewal procedures.**

*a. Renewal notice.* The board office will send a renewal notice by regular mail or e-mail to each licensee at the licensee's last-known mailing or e-mail address.

*b. Licensee and permit holder obligation.* The licensee or permit holder is responsible for renewing the license or permit prior to its expiration. Failure of the licensee or permit holder to receive the notice does not relieve the licensee or permit holder of the responsibility for renewing that license or permit in order to continue practicing in the state of Iowa.

*c. Renewal application form.* Application for renewal must be made on forms provided by the board office. Licensees and permit holders may renew their licenses and permits online or via paper application.

*d. Complete and timely filed application.* No renewal application shall be considered timely and sufficient until received by the board office and accompanied by all material required for renewal and all applicable renewal and late fees. Incomplete applications will be not be accepted. For purposes of establishing timely filing, the postmark on a paper submittal will be used, and for renewals submitted online, the electronic timestamp will be deemed the date of filing.

**14.1(2) Application fee.** The appropriate fee as specified in 650—Chapter 15 of these rules must accompany the application for renewal. A penalty shall be assessed by the board for late renewal, as specified in 650—Chapter 15.

**14.1(3) Continuing education requirements.** Completion of continuing education in accordance with 650—Chapter 25 is required for renewal of an active license. However, licensees are exempt from the continuing education requirement for the current biennium in which the license is first issued.

**14.1(4) CPR certification.** In order to renew a license, an applicant must submit a statement:

*a.* Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;

*b.* Providing the expiration date of the CPR certificate; and

*c.* Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

**14.1(5) Dental hygiene committee review.** The dental hygiene committee may, in its discretion, review any applications for renewal of a dental hygiene license and make recommendations to the board. The board's review is subject to 650—Chapter 1.

This rule is intended to implement Iowa Code section 147.10 and chapters 153 and 272C.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—14.2(153) Renewal of registration as a dental assistant.** A certificate of registration as a registered dental assistant must be renewed biennially. Registration certificates shall expire on August 31 of every odd-numbered year.

**14.2(1) Renewal procedures.**

*a. Renewal notice.* The board office will send a renewal notice by regular mail or e-mail to each registrant at the registrant's last-known mailing address or e-mail address. The board will notify each registrant by mail or e-mail of the expiration of the registration certificate.

*b. Registrant obligation.* The registrant is responsible for renewing the registration prior to its expiration. Failure of the registrant to receive the notice does not relieve the registrant of the responsibility for renewing that registration in order to continue practicing in the state of Iowa.

*c. Renewal application form.* Registrants may renew their registration online or via paper application. Paper application for renewal must be made in writing on forms provided by the board office before the current registration expires.

*d. Complete and timely filed application.* No renewal application shall be considered timely and sufficient until received by the board office and accompanied by all material required for renewal and all applicable renewal and late fees. Incomplete applications will not be accepted. For purposes of establishing timely filing, the postmark on a paper submittal will be used, and for renewals submitted online, the electronic timestamp will be deemed the date of filing.

**14.2(2) Application fee.** The appropriate fee as specified in 650—Chapter 15 must accompany the application for renewal. A penalty shall be assessed by the board for late renewal, as specified in 650—Chapter 15.

**14.2(3) Continuing education requirements.** Completion of continuing education as specified in rule 650—20.11(153) and 650—Chapter 25 is required for renewal of an active registration. Failure to meet the requirements of renewal in the time specified by rule will automatically result in a lapsed registration.

**14.2(4) CPR certification.** In order to renew a registration, an applicant must submit a statement:

- a.* Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;
- b.* Providing the expiration date of the CPR certificate; and
- c.* Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

This rule is intended to implement Iowa Code sections 147.10 and 153.39.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—14.3(136C,153) Renewal of dental assistant radiography qualification.** A certificate of radiography qualification must be renewed biennially. Radiography qualification certificates shall expire on August 31 of every odd-numbered year.

**14.3(1) Renewal procedures.**

*a. Renewal notice.* The board office will send a renewal notice by regular mail or e-mail to each registrant at the registrant’s last-known mailing address or e-mail address. The board will notify each registrant by mail or e-mail of the expiration of the radiography qualification.

*b. Registrant obligation.* The registrant is responsible for renewing the radiography qualification prior to its expiration. Failure of the registrant to receive the notice does not relieve the registrant of the responsibility for renewing that radiography qualification if the registrant wants to continue taking dental radiographs in the state of Iowa.

*c. Renewal application form.* Application for renewal must be made in writing on forms provided by the board office before the current radiography qualification expires. Registrants may renew their radiography qualification online or via paper application.

*d. Complete and timely filed application.* No renewal application shall be considered timely and sufficient until received by the board office and accompanied by all material required for renewal and all applicable renewal and late fees. Incomplete applications will not be accepted. For purposes of establishing timely filing, the postmark on a paper submittal will be used, and for renewals submitted online, the electronic timestamp will be deemed the date of filing.

**14.3(2) Application fee.** The appropriate fee as specified in 650—Chapter 15 must accompany the application for renewal. A penalty shall be assessed by the board for late renewal, as specified in 650—Chapter 15.

**14.3(3) Continuing education requirements.** In order to renew a radiography qualification, the dental assistant shall obtain at least two hours of continuing education in the subject area of dental radiography. Proof of attendance shall be retained by the dental assistant and must be submitted to the board office upon request.

**14.3(4) CPR certification.** In order to renew a radiography qualification, an applicant must submit a statement:

- a. Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a “hands-on” clinical component;
- b. Providing the expiration date of the CPR certificate; and
- c. Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

This rule is intended to implement Iowa Code chapters 136C and 153.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—14.4(147,153,272C) Grounds for nonrenewal.** The board may refuse to renew a license, registration or radiography qualification on the following grounds:

**14.4(1)** After proper notice and hearing, for a violation of these rules or Iowa Code chapter 147, 153, or 272C during the term of the last license, registration or radiography qualification or renewal of license, registration or radiography qualification.

**14.4(2)** Failure to pay required fees.

**14.4(3)** Failure to obtain required continuing education.

**14.4(4)** Failure to provide a statement of current certification in cardiopulmonary resuscitation in a course that includes a clinical component.

**14.4(5)** Receipt of a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services in accordance with 650—Chapter 33 and 650—Chapter 34.

This rule is intended to implement Iowa Code section 153.23 and chapters 147, 252J, 261, and 272C.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—14.5(147,153,272C) Late renewal.**

**14.5(1)** *Failure to renew license or permit.*

a. Failure to renew a dental or dental hygiene license or permit prior to September 1 following expiration shall result in a late fee in the amount specified in 650—Chapter 15 being assessed by the board in addition to the renewal fee.

b. Failure to renew prior to October 1 following expiration shall result in assessment of a late fee in the amount specified in 650—Chapter 15.

c. Failure of a license or permit holder to renew a license or permit prior to November 1 following expiration shall cause the license or permit to lapse and become invalid. A licensee or permit holder whose license or permit has lapsed and become invalid is prohibited from the practice of dentistry or dental hygiene until the license or permit is reinstated in accordance with rule 650—14.6(147,153,272C).

**14.5(2)** *Failure to renew registration.*

a. Failure to renew a dental assistant registration prior to September 1 following expiration shall result in a late fee in the amount specified in 650—Chapter 15 assessed by the board in addition to the renewal fee.

b. Failure to renew prior to October 1 following expiration shall result in assessment of a late fee in the amount specified in 650—Chapter 15.

c. Failure to renew a registration prior to November 1 following expiration shall cause the registration to lapse and become invalid. A registrant whose registration has lapsed and become invalid is prohibited from practicing as a dental assistant until the registration is reinstated in accordance with rule 650—14.6(147,153,272C).

**14.5(3)** *Failure to renew radiography qualification.* Failure to renew a radiography qualification prior to November 1 following expiration shall cause the radiography qualification to lapse and become invalid. A dental assistant whose radiography qualification is lapsed is prohibited from engaging in dental radiography until the qualification is reinstated in accordance with rule 650—14.7(136C,153).

This rule is intended to implement Iowa Code sections 147.10, 147.11, and 272C.2.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—14.6(147,153,272C) Reinstatement of a lapsed license or registration.**

**14.6(1)** A licensee or a registrant who allows a license or registration to lapse by failing to renew may have the license or registration reinstated at the discretion of the board by submitting the following:

- a.* A completed application for reinstatement of a lapsed license to practice dentistry or dental hygiene or application for reinstatement of a lapsed registration on the form provided by the board.
- b.* Dates and places of practice.
- c.* A list of other states in which licensed or registered and the identifying number of each license or registration.
- d.* Reasons for seeking reinstatement and why the license or registration was not maintained.
- e.* Payment of all renewal fees past due, as specified in 650—Chapter 15, plus the reinstatement fee as specified in 650—Chapter 15.
- f.* Evidence of completion of a total of 15 hours of continuing education for each lapsed year or part thereof in accordance with 650—Chapter 25, up to a maximum of 75 hours. Dental assistants shall be required to submit evidence of completion of a total of 10 hours of continuing education for each lapsed year or part thereof in accordance with 650—20.12(153), up to a maximum of 50 hours.
- g.* If licensed or registered in another state, the licensee or registrant shall provide certification by the state board of dentistry or equivalent authority of such state that the licensee or registrant has not been the subject of final or pending disciplinary action.
- h.* A statement disclosing and explaining any disciplinary actions, investigations, claims, complaints, judgments, settlements, or criminal charges.
- i.* Evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation. The course must include a clinical component.
- j.* For reinstatement of a lapsed license, a completed fingerprint packet to facilitate a criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI), including the fee for the evaluation of the fingerprint packet and the criminal history background checks by the DCI and FBI, as specified in 650—Chapter 15.

**14.6(2)** The board may require a licensee or registrant applying for reinstatement to successfully complete an examination designated by the board prior to reinstatement if necessary to ensure the licensee or registrant is able to practice the licensee's or registrant's respective profession with reasonable skill and safety.

**14.6(3)** When the board finds that a practitioner applying for reinstatement is or has been subject to disciplinary action taken against a license or registration held by the applicant in another state of the United States, District of Columbia, or territory, and the violations which resulted in such actions would also be grounds for discipline in Iowa in accordance with rule 650—30.4(153), the board may deny reinstatement of a license or registration to practice dentistry, dental hygiene, or dental assisting in Iowa or may impose any applicable disciplinary sanctions as specified in rule 650—30.2(153) as a condition of reinstatement.

**14.6(4)** The dental hygiene committee may, in its discretion, review any applications for reinstatement of a lapsed dental hygiene license and make recommendations to the board. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 1.

This rule is intended to implement Iowa Code sections 147.10, 147.11, and 272C.2.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—14.7(136C,153) Reinstatement of lapsed radiography qualification.** A dental assistant who allows a radiography qualification to lapse by failing to renew may have the radiography qualification reinstated at the discretion of the board by submitting the following:

- 14.7(1)** A completed application for reinstatement of the dental assistant radiography qualification.
- 14.7(2)** Payment of the radiography reinstatement application fee and the current renewal fee, both as specified in 650—Chapter 15.
- 14.7(3)** Proof of current registration as a dental assistant or proof of an active Iowa nursing license.

**14.7(4)** If the radiography qualification has been lapsed for less than four years, proof of two hours of continuing education in the subject area of dental radiography, taken within the previous two-year period.

**14.7(5)** If the radiography qualification has been lapsed for more than four years, the dental assistant shall be required to retake and successfully complete an examination in dental radiography. A dental assistant who presents proof of a current radiography qualification issued by another state and who has engaged in dental radiography in that state is exempt from the examination requirement.

This rule is intended to implement Iowa Code section 136C.3 and chapter 153.

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CHAPTER 15  
FEES

**650—15.1(147,153) Establishment of fees.** The board is self-supporting through the collection of fees and does not receive an appropriation from the general fund. Pursuant to Iowa Code section 147.80, the board is to establish fees by rule based on the costs of sustaining the board and the actual costs of the services performed by the board. Under Iowa law, the board is required to annually prepare an estimate of projected revenues generated by the fees received and review projected expenses to ensure that there are sufficient funds to cover projected expenses.

[ARC 0164C, IAB 6/13/12, effective 5/21/12; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.2(147,153) Definitions.** The following definitions apply to this chapter:

“*Fee*” means the amount charged for the services described in this chapter. All fees are nonrefundable. The board office will refund any overpayment of fees.

“*Service charge*” means the amount charged for making a service available online and is in addition to the actual fee for a service itself. For example, a licensee who renews a license online will pay the license renewal fee and a service charge.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.3(153) Application fees.** All fees are nonrefundable. In addition to the fees specified in this rule, an applicant will pay a service charge for filing online.

**15.3(1) Dental licensure on the basis of examination.** The fees for a dental license issued on the basis of examination include an application fee, a fee for evaluation of a fingerprint packet and criminal background check and, if the applicant is applying within three months or less of a biennial renewal due date, the renewal fee.

a. *Application fee.* The application fee for a license to practice dentistry is \$200.

b. *Initial licensure period and renewal period.* If an applicant applies within three months or less of a biennial renewal due date, the applicant shall pay the renewal fee along with the licensure application fee. A license shall not be issued for a period less than three months or longer than two years and three months. Thereafter, a licensee shall pay the renewal fee as specified in 650—15.4(153).

c. *Fingerprint packet and criminal history check.* The fee for evaluation of a fingerprint packet and criminal background check is as specified in subrule 15.7(4).

**15.3(2) Dental hygiene licensure on the basis of examination.** The fees for a dental hygiene license issued on the basis of examination include an application fee, an initial licensure fee, and a fee for evaluation of a fingerprint packet and criminal background check.

a. *Application fee.* The application fee for a license to practice dental hygiene is \$100.

b. *Initial licensure period and renewal period.* If an applicant applies within three months or less of a biennial renewal due date, the applicant shall pay the renewal fee along with the licensure application fee. A license shall not be issued for a period less than three months or longer than two years and three months. Thereafter, a licensee shall pay the renewal fee as specified in 650—15.4(153).

c. *Fingerprint packet and criminal history check.* The fee for evaluation of a fingerprint packet and criminal background check is as specified in subrule 15.7(4).

**15.3(3) Resident dental license.** The application fee for a resident dental license is \$120.

**15.3(4) Faculty permit.** The application fee for a faculty permit is \$200.

**15.3(5) Dental licensure on the basis of credentials.** The fees for a dental license issued on the basis of credentials include an application fee, an initial licensure fee, and a fee for evaluation of a fingerprint packet and criminal background check.

a. *Application fee.* The application fee for a license to practice dentistry issued on the basis of credentials is \$550.

b. *Initial licensure period and renewal period.* If an applicant applies within three months or less of a biennial renewal due date, the applicant shall pay the renewal fee along with the licensure application fee. A license shall not be issued for a period less than three months or longer than two years and three months. Thereafter, a licensee shall pay the renewal fee as specified in 650—15.4(153).

*c. Fingerprint packet and criminal history check.* The fee for evaluation of a fingerprint packet and criminal background check is as specified in subrule 15.7(4).

**15.3(6) Dental hygiene licensure on the basis of credentials.** The fees for a dental hygiene license issued on the basis of credentials include an application fee, an initial licensure fee, and a fee for evaluation of a fingerprint packet and criminal background check.

*a. Application fee.* The application fee for a license to practice dental hygiene issued on the basis of credentials is \$200.

*b. Initial licensure period and renewal period.* If an applicant applies within three months or less of a biennial renewal due date, the applicant shall pay the renewal fee along with the licensure application fee. A license shall not be issued for a period less than three months or longer than two years and three months. Thereafter, a licensee shall pay the renewal fee as specified in 650—15.4(153).

*c. Fingerprint packet and criminal history check.* The fee for evaluation of a fingerprint packet and criminal background check is as specified in subrule 15.7(4).

**15.3(7) Reactivation of an inactive license or registration.** The fee for a reactivation application for inactive practitioners is \$50.

**15.3(8) Reinstatement of an inactive license or registration.** The fee for a reinstatement application for a lapsed license or registration is \$150.

**15.3(9) General anesthesia permit application.** The application fee for a general anesthesia permit is \$500.

**15.3(10) Moderate sedation permit application.** The application fee for a moderate sedation permit is \$500.

**15.3(11) Local anesthesia permit—initial application and reinstatement.** The application or reinstatement fee for a permit to authorize a dental hygienist to administer local anesthesia is \$70.

**15.3(12) Dental assistant trainee application.** The fee for an application for registration as a dental assistant trainee is \$25.

**15.3(13) Dental assistant registration only application.** The fee for an application for registration as a registered dental assistant is \$40.

**15.3(14) Combined application—dental assistant registration and qualification in radiography.** The fee for a combined application for both registration as a registered dental assistant and radiography qualification is \$60.

**15.3(15) Dental assistant radiography qualification application fee.** The fee for an application for dental assistant radiography qualification is \$40.

**15.3(16) Temporary permit—urgent need or educational services.** The fee for an application for a temporary permit to serve an urgent need or provide educational services is \$100 if an application is submitted online or \$150 if submitted via paper application.

**15.3(17) Temporary permit—volunteer services.** The fee for an application for a temporary permit to provide volunteer services is \$25.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.4(153) Renewal fees.** All fees are nonrefundable. Each two-year renewal period begins on September 1 and runs through August 31. Dental licenses, moderate sedation permits, and general anesthesia permits expire in even-numbered years. Dental hygiene licenses, local anesthesia permits, dental assistant registration and qualification in dental radiography expire in odd-numbered years. To avoid late fees, paper renewal applications must be postmarked on or received in the board office by August 31. To avoid late fees, online renewal applications must be time-stamped no later than 11:59 p.m. (CST) on August 31.

**15.4(1) Dental license renewal.** The fee for renewal of a license to practice dentistry for a biennial period is \$315 for an active practitioner and \$315 for an inactive practitioner.

**15.4(2) Dental hygiene license renewal.** The fee for renewal of a license to practice dental hygiene for a biennial period is \$150 for an active practitioner and \$150 for an inactive practitioner.

**15.4(3) General anesthesia permit renewal.** The fee for renewal of a general anesthesia permit is \$125.

**15.4(4) Moderate sedation permit renewal.** The fee for renewal of a moderate sedation permit is \$125.

**15.4(5) Local anesthesia permit renewal.** The fee for renewal of a permit to authorize a dental hygienist to administer local anesthesia is \$25.

**15.4(6) Dental assistant registration renewal.** The fee for renewal of registration as a registered dental assistant is \$75.

**15.4(7) Combined renewal application—dental assistant registration and qualification in radiography.** The fee for a combined application to renew both a registration as a registered dental assistant and a radiography qualification is \$115.

**15.4(8) Dental assistant qualification in radiography renewal.** The fee for renewal of a certificate of qualification in dental radiography is \$40.

**15.4(9) Faculty permit renewal.** The fee for renewal of a faculty permit is \$315.

**15.4(10) Resident license renewal.** The fee for renewal or extension of a resident license is \$40.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.5(153) Late renewal fees.** All fees are nonrefundable. A licensee, registrant or permit holder who fails to renew a license, registration or permit following expiration is subject to late renewal fees as described in this rule.

**15.5(1) Failure to renew a license, registration or permit prior to September 1.** Failure by a licensee, registrant or permit holder to renew the license, registration or permit prior to September 1 following expiration shall result in the following late fees:

- a. *Dental license or permit.* A late fee of \$100 shall be assessed, in addition to the renewal fee.
- b. *Dental hygiene license.* A late fee of \$100 shall be assessed, in addition to the renewal fee.
- c. *Dental assistant registration.* A late fee of \$20 shall be assessed, in addition to the renewal fee.

**15.5(2) Failure to renew a license, registration or permit prior to October 1.** Failure by a licensee, registrant or permit holder to renew the license, registration or permit prior to October 1 following expiration shall result in the following late fees:

- a. *Dental license or permit.* A late fee of \$150 shall be assessed, in addition to the renewal fee.
- b. *Dental hygiene license.* A late fee of \$150 shall be assessed, in addition to the renewal fee.
- c. *Dental assistant registration.* A late fee of \$40 shall be assessed, in addition to the renewal fee.

**15.5(3) Failure to renew a license, registration or permit prior to November 1.** Failure by a licensee, registrant or permit holder to renew a license, registration or permit prior to November 1 following expiration shall cause the license, registration or permit to lapse and become invalid. A licensee, registrant or permit holder whose license, registration or permit has lapsed and become invalid is prohibited from the practice of dentistry, dental hygiene, or dental assisting until the license, registration or permit is reinstated.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.6(147,153) Reinstatement fees.** If a license, registration or permit lapses or is inactive, a licensee, registrant or permit holder may submit an application for reinstatement. Licensees, registrants or permit holders are subject to reinstatement fees as described in this rule.

**15.6(1) Reinstatement of a dental license.** In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$750) and the fee for evaluation of a fingerprint packet and criminal background check as specified in 15.7(4).

**15.6(2) Reinstatement of a dental hygiene license.** In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$750) and the fee for evaluation of a fingerprint packet and criminal background check as specified in 15.7(4).

**15.6(3) Reinstatement of a dental assistant registration.** In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$750).

**15.6(4) Combined reinstatement application—dental assistant registration and qualification in radiography.** The fee for a combined application to reinstate both a registration as a registered dental assistant and a radiography qualification is specified in 15.3(8).

**15.6(5) Reinstatement of qualification in radiography.** In addition to the reinstatement application fee specified in 15.3(8), the applicant must pay all back renewal fees (not to exceed \$750).  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.7(153) Miscellaneous fees.** Payments made to the Iowa Dental Board, which shall be considered a repayment receipt as defined in Iowa Code section 8.2, shall be received in the board office prior to release of the requested document.

**15.7(1) Duplicates.** The fee for issuance of a duplicate license, permit or registration certificate or current renewal is \$25.

**15.7(2) Certification or verification.** The fee for a certification or written verification of an Iowa license, permit or registration is \$25.

**15.7(3) Trainee manual.** The fee for the dental assistant trainee manual is \$70.

**15.7(4) Fingerprint packet and criminal history background check.** The fee for evaluation of a fingerprint packet and the criminal history background checks is \$46.

**15.7(5) IPRC monitoring.** The fee for monitoring for compliance with an IPRC agreement is \$100 per quarter, unless otherwise stated in the Iowa practitioner program contract entered into pursuant to 650—Chapter 35.

**15.7(6) Monitoring for compliance with settlement agreements.** The fee for monitoring a licensee's, registrant's or permit holder's compliance with a settlement agreement entered into pursuant to 650—subrule 51.19(9) is \$300 per quarter, unless otherwise stated in the settlement agreement.

**15.7(7) Disciplinary hearings—fees and costs.**

*a.* Definitions. As used in this subrule in relation to fees related to a formal disciplinary action filed by the board against a licensee, registrant or permit holder:

“*Deposition*” means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Medical examination fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

*b.* The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

- (1) Transcript.
- (2) Witness fees and expenses.
- (3) Depositions.
- (4) Medical examination fees incurred relating to a person licensed under Iowa Code chapter 147.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.8(153) Continuing education fees.**

**15.8(1) Application for prior approval of activities.** The fee for an application for prior approval of a continuing education activity is \$10.

**15.8(2) Application for postapproval of activities.** The fee for an application for postapproval of a continuing education activity is \$10.

**15.8(3) Application for approved sponsor status.** The fee for an application to become an approved sponsor for a continuing education activity is \$100. The biennial renewal fee is \$100.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.9(153) Facility inspection fee.** The actual costs for an on-site evaluation of a facility at which deep sedation/general anesthesia or moderate sedation is authorized pursuant to 650—Chapter 29 shall not exceed \$500 per facility per inspection.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.10(22,147,153) Public records.** Public records are available according to 650—Chapter 6, “Public Records and Fair Information Practices.” Payment made to the Iowa Dental Board, which shall be considered a repayment receipt as defined in Iowa Code section 8.2, shall be received in the board office prior to the release of the records.

**15.10(1)** Copies of public records shall be calculated at \$.25 per page plus labor. A \$16 per-hour fee shall be charged for labor in excess of one-half hour for searching and copying documents or retrieving and copying information stored electronically. No additional fee shall be charged for delivery of the records by mail or fax. A fax is an option if the requested records are fewer than 30 pages. The board office shall not require payment when the fees for the request would be less than \$5 total.

**15.10(2)** Electronic copies of public records delivered by e-mail shall be calculated at \$.10 per page; the minimum charge shall be \$5. A \$16 per-hour fee shall be charged for labor in excess of one-half hour for searching and copying documents or retrieving and copying information stored electronically. The board office shall not require payment when the fee for the request would be less than \$5 total.

**15.10(3)** Electronic files of statements of charges, final orders and consent agreements from each board meeting delivered via e-mail may be available for an annual subscription fee of \$24.

**15.10(4)** Printed copies of statements of charges, final orders and consent agreements from each board meeting shall be available for an annual subscription fee of \$120.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.11(22,147,153) Purchase of a mailing list or data list.** Payment made to the Iowa Dental Board, which shall be considered a repayment receipt as defined in Iowa Code section 8.2, shall be received in the board office prior to the release of a list.

**15.11(1) Mailing list.** The standard mailing list for all active dental and dental hygiene licensees and dental assistant registrants includes the full name, address, city, state, and ZIP code. The standard mailing list of dentists or dental hygienists does not include resident licensees or faculty permit holders.

- a. Printed mailing list, \$65 per profession requested.
- b. Mailing list on disc or DVD, \$45 per profession requested.
- c. Mailing list in an electronic file, \$35 per profession requested.

**15.11(2) Data list for dentists, hygienists, or assistants.** The standard data list for active licensees or registrants includes full name, address, Iowa county (if applicable), issue date, expiration date, license or registration number, and license or registration status. Additional data elements, programming or sorting increases the following fees by \$25.

- a. Printed standard data list, \$75 per profession requested.
- b. Standard data list on disc or DVD, \$55 per profession requested.
- c. Standard data list in an electronic file, \$45 per profession requested.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.12(147,153) Returned checks.** The board shall charge a fee of \$39 for a check returned for any reason. If a license or registration had been issued by the board office based on a check that is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification of the returned check by certified mail, the licensee or registrant shall be subject to disciplinary action for noncompliance with board rules.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.13(147,153,272C) Copies of the laws and rules.** Copies of laws and rules pertaining to the practice of dentistry, dental hygiene, or dental assisting are available from the board office for the following fees.

1. Iowa Code and Iowa Administrative Code access, no fee, available at [www.state.ia.us/dentalboard](http://www.state.ia.us/dentalboard).

2. Printed copies of the Iowa Code chapters that pertain to the practice of dentistry, \$10.

3. Printed copies of dental board rules in the Iowa Administrative Code, \$15.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—15.14(17A,147,153,272C) Waiver prohibited.** Rules in this chapter are not subject to waiver pursuant to 650—Chapter 7 or any other provision of law.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code sections 147.10, 147.80 and 153.22.

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<sup>◇</sup> Two or more ARCs

TITLE IV  
AUXILIARY PERSONNEL

## CHAPTER 20

## DENTAL ASSISTANTS

[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—20.1(153) Registration required.** A person shall not practice on or after July 1, 2001, as a dental assistant unless the person has registered with the board and received a certificate of registration pursuant to this chapter.

**650—20.2(153) Definitions.** As used in this chapter:

*“Dental assistant”* means any person who, under the supervision of a dentist, performs any extraoral services including infection control or the use of hazardous materials or performs any intraoral services on patients. The term “dental assistant” does not include persons otherwise actively licensed in Iowa to practice dental hygiene or nursing who are engaged in the practice of said profession.

*“Direct supervision”* means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room while the registered dental assistant is performing acts assigned by the dentist.

*“General supervision”* means that a dentist has delegated the services to be provided by a registered dental assistant. The dentist need not be present in the facility while these services are being provided.

*“Personal supervision”* means the dentist is physically present in the treatment room to oversee and direct all intraoral or chairside services of the dental assistant and a licensee or registrant is physically present to oversee and direct all extraoral services of the dental assistant.

[ARC 8369B, IAB 12/16/09, effective 1/20/10]

**650—20.3(153) Scope of practice.**

**20.3(1)** In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

**20.3(2)** A licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following:

- a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.
- b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.
- c. Administration of local anesthesia.
- d. Placement of sealants.
- e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.
- f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.
- g. Those procedures that require the professional judgment and skill of a dentist.

**20.3(3)** A dentist may delegate an expanded function duty to a registered dental assistant if the assistant has completed board-approved training pursuant to rule 650—20.16(153) in the specific expanded function that will be delegated. The supervising dentist and registered dental assistant shall be responsible for maintaining in the office of practice documentation of board-approved training. In addition to the other duties authorized under this rule, a dentist may delegate any of the following expanded function duties:

- a. Taking occlusal registrations;
- b. Placement and removal of gingival retraction;
- c. Taking final impressions;
- d. Fabrication and removal of provisional restorations;

- e. Applying cavity liners and bases, desensitizing agents, and bonding systems;
- f. Placement and removal of dry socket medication;
- g. Placement of periodontal dressings;
- h. Testing pulp vitality; and
- i. Monitoring of nitrous oxide inhalation analgesia.

**20.3(4)** A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

- a. The education of the dental assistant.
- b. The experience of the dental assistant.

**650—20.4(153) Categories of dental assistants.** There are two categories of dental assistants. Both the supervising dentist and dental assistant are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

**20.4(1) Dental assistant trainee.** Dental assistant trainees are all individuals who are engaging in on-the-job training to meet the requirements for registration and who are learning the necessary skills under the personal supervision of a licensed dentist. Trainees may also engage in on-the-job training in dental radiography pursuant to 650—22.3(136C,153). The dental assistant trainee shall meet the following requirements:

a. Within 12 months of employment, the dental assistant trainee shall successfully complete a course of study and examination in the areas of infection control, hazardous materials, and jurisprudence. The course of study shall be prior approved by the board and sponsored by a board-approved postsecondary school.

b. Prior to satisfactorily completing 12 months of work as a dental assistant, the trainee must apply to the board to be reclassified as a registered dental assistant.

c. Dental assistant trainee status is valid for practice for a maximum of 12 months. If trainee status has expired, the trainee must meet the requirements for registration and receive a certificate of registration in order to practice as a dental assistant.

d. Notwithstanding paragraphs “b” and “c,” the expiration date for dental assistant trainee status for a person enrolled in a cooperative education or work-study program through an Iowa high school shall be extended until the trainee is 17 years of age and a high school graduate or equivalent. However, a trainee under 18 years of age shall not participate in dental radiography.

**20.4(2) Registered dental assistant.** A registered dental assistant may perform under general supervision dental radiography, intraoral suctioning, and all extraoral duties that are assigned by the dentist and are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if qualified pursuant to 650—Chapter 22.

**20.4(3) Expanded function dental assistant.** Rescinded IAB 9/17/03, effective 10/22/03.

**650—20.5(153) Registration requirements prior to July 2, 2001.**

**20.5(1)** A person employed as a dental assistant as of July 1, 2001, shall be registered with the board as a registered dental assistant without meeting the application requirements specified in 20.6(153), provided the application is postmarked by July 1, 2001.

**20.5(2)** Applications for registration prior to July 2, 2001, must be filed on official board forms and include the following:

- a. The fee as specified in 650—Chapter 15.
- b. Evidence of current employment as a dental assistant as demonstrated by a signed statement from the applicant’s employer.
- c. Evidence of current certification in dental radiography pursuant to 650—Chapter 22 if engaging in dental radiography.

**20.5(3)** Applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

**650—20.6(153) Registration requirements after July 1, 2001.** Effective July 2, 2001, dental assistants must meet the following requirements for registration:

**20.6(1) Dental assistant trainee.**

*a.* A dentist supervising a person performing dental assistant duties must notify the board in writing of such employment within seven days of the time the dental assistant begins work.

*b.* Applications for registration as a dental assistant trainee must be filed on official board forms and include the following:

- (1) The fee as specified in 650—Chapter 15.
- (2) Evidence of high school graduation.
- (3) Evidence the applicant is 17 years of age or older.
- (4) Any additional information required by the board relating to the character and experience of the applicant as may be necessary to evaluate the applicant's qualifications.
- (5) If the applicant does not meet the requirements of (2) and (3) above, evidence that the applicant is enrolled in a cooperative education or work-study program through an Iowa high school.

*c.* Within 12 months of employment, the dental assistant trainee is required to successfully complete a board-approved course of study and examination in the areas of infection control, hazardous materials, and jurisprudence. The course of study may be taken at a board-approved postsecondary school or on the job using curriculum approved by the board for such purpose. Evidence of meeting this requirement shall be submitted within 12 months by the employer dentist.

*d.* Upon expiration of the trainee status, the dental assistant trainee's supervising dentist must ensure that the trainee has received a certificate of registration before performing any further dental assisting duties.

**20.6(2) Registered dental assistant.**

*a.* To meet this qualification, a person must:

- (1) Work in a dental office for six months as a dental assistant trainee; or
- (2) Have had at least six months of prior dental assisting experience under a licensed dentist within the past two years; or
- (3) Be a graduate of an accredited dental assisting program approved by the board; and
- (4) Be a high school graduate or equivalent; and
- (5) Be 17 years of age or older.

*b.* Applications for registration as a registered dental assistant must be filed on official board forms and include the following:

- (1) The fee as specified in 650—Chapter 15.
- (2) Evidence of meeting the requirements specified in 20.6(2) "a."
- (3) Evidence of successful completion of a course of study approved by the board and sponsored by a board-approved, accredited dental assisting program in the areas of infection control, hazardous materials, and jurisprudence. The course of study may be taken at a board-approved, accredited dental assisting program or on the job using curriculum approved by the board for such purpose.
- (4) Evidence of successful completion of a board-approved examination in the areas of infection control, hazardous materials, and jurisprudence.
- (5) Evidence of high school graduation or the equivalent.
- (6) Evidence the applicant is 17 years of age or older.
- (7) Evidence of meeting the qualifications of 650—Chapter 22 if engaging in dental radiography.
- (8) A statement:
  1. Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a "hands-on" clinical component;
  2. Providing the expiration date of the CPR certificate; and
  3. Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

(9) Any additional information required by the board relating to the character, education and experience of the applicant as may be necessary to evaluate the applicant's qualifications.

**20.6(3)** Rescinded IAB 9/17/03, effective 10/22/03.

**20.6(4)** All applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—20.7(153) Registration denial.** The board may deny an application for registration as a dental assistant for any of the following reasons:

1. Failure to meet the requirements for registration as specified in these rules.
2. Pursuant to Iowa Code section 147.4, upon any of the grounds for which registration may be revoked or suspended as specified in 650—Chapter 30.

**650—20.8(147,153) Denial of registration—appeal procedure.** The board shall follow the procedures specified in 650—11.10(147) if the board proposes to deny registration to a dental assistant applicant.

This rule is intended to implement Iowa Code sections 147.3, 147.4 and 147.29.

[ARC 7789B, IAB 5/20/09, effective 6/24/09]

**650—20.9(153) Examination requirements.** Beginning July 2, 2001, applicants for registration must successfully pass an examination approved by the board on infection control, hazardous waste, and jurisprudence.

**20.9(1)** Examinations approved by the board are those administered by the board or board's approved testing centers or the Dental Assisting National Board Infection Control Examination, if taken after June 1, 1991, in conjunction with the board-approved jurisprudence examination. In lieu of the board's infection control examination, the board may approve an infection control examination given by another state licensing board if the board determines that the examination is substantially equivalent to the examination administered by the board.

**20.9(2)** Information on taking the examination may be obtained by contacting the board office at 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

**20.9(3)** An examinee must meet such other requirements as may be imposed by the board's approved dental assistant testing centers.

**20.9(4)** A dental assistant trainee must successfully pass the examination within 12 months of the first date of employment. A dental assistant trainee who does not successfully pass the examination within 12 months shall be prohibited from working as a dental assistant until the dental assistant trainee passes the examination in accordance with these rules.

**20.9(5)** A score of 75 or better on the board infection control/hazardous material exam and a score of 75 or better on the board jurisprudence exam shall be considered successful completion of the examination. The board accepts the passing standard established by the Dental Assisting National Board for applicants who take the Dental Assisting National Board Infection Control Examination.

**20.9(6)** The written examination may be waived by the board, in accordance with the board's waiver rules at 650—Chapter 7, in practice situations where the written examination is deemed to be unnecessary or detrimental to the dentist's practice.

**650—20.10(153) System of retaking dental assistant examinations.**

**20.10(1)** *Second examination.*

*a.* On the second examination attempt, a dental assistant shall be required to obtain a score of 75 percent or better on each section of the examination.

*b.* A dental assistant who fails the second examination will be required to complete the remedial education requirements set forth in subrule 20.10(2).

**20.10(2)** *Third and subsequent examinations.*

*a.* Prior to the third examination attempt, a dental assistant must submit proof of additional formal education in the area of the examination failure in a program approved by the board or sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association.

b. A dental assistant who fails the examination on the third attempt may not practice as a dental assistant in a dental office or clinic until additional remedial education approved by the board has been obtained.

c. For the purposes of additional study prior to retakes, the fourth or subsequent examination failure shall be considered the same as the third.

**650—20.11(153) Continuing education.** Beginning July 1, 2001, each person registered as a dental assistant shall complete 20 hours of continuing education approved by the board during the biennium period as a condition of registration renewal.

**20.11(1)** At least two continuing education hours must be in the subject area of infection control.

**20.11(2)** A maximum of three hours may be in cardiopulmonary resuscitation.

**20.11(3)** For dental assistants who have radiography qualification, at least two hours of continuing education must be obtained in the subject area of radiography.

**20.11(4)** For the renewal period July 1, 2001, to June 30, 2003, at least one hour of continuing education must be obtained in the subject area of jurisprudence.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—20.12(252J,261) Receipt of certificate of noncompliance.** The board shall consider the receipt of a certificate of noncompliance from the college student aid commission pursuant to Iowa Code sections 261.121 to 261.127 and 650—Chapter 34 or receipt of a certificate of noncompliance of a support order from the child support recovery unit pursuant to Iowa Code chapter 252J and 650—Chapter 33. Registration denial or denial of renewal of registration shall follow the procedures in the statutes and board rules as set forth in this rule.

This rule is intended to implement Iowa Code chapter 252J and sections 261.121 to 261.127.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—20.13(153) Unlawful practice.** A dental assistant who assists a dentist in practicing dentistry in any capacity other than as a person supervised by a dentist in a dental office, or who directly or indirectly procures a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such dental assistant to engage directly or indirectly in the practice of dentistry, or who performs dental service directly or indirectly on or for members of the public other than as a person working for a dentist shall be deemed to be practicing dentistry without a license.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—20.14(153) Advertising and soliciting of dental services prohibited.** Dental assistants shall not advertise, solicit, represent or hold themselves out in any manner to the general public that they will furnish, construct, repair or alter prosthetic, orthodontic or other appliances, with or without consideration, to be used as substitutes for or as part of natural teeth or associated structures or for the correction of malocclusions or deformities, or that they will perform any other dental service.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—20.15(153) Expanded function training approval.** Expanded function training shall be eligible for board approval if the training is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the board, which may include on-the-job training offered by a dentist licensed in Iowa. Training must consist of the following:

1. An initial assessment to determine the base entry level of all participants in the program. At a minimum, participants must be currently certified by the Dental Assisting National Board or must have two years of clinical dental assisting experience as a registered dental assistant;

2. A didactic component;

3. A laboratory component, if necessary;

4. A clinical component, which may be obtained under the personal supervision of the participant's supervising dentist while the participant is concurrently enrolled in the training program; and

5. A postcourse competency assessment at the conclusion of the training program.  
[ARC 0265C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code chapter 153.

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[Filed ARC 0265C (Notice ARC 0128C, IAB 5/16/12), IAB 8/8/12, effective 9/12/12]

<sup>1</sup> The Administrative Rules Review Committee at their May 21, 1979, meeting delayed the effective date of Chapters 20 and 21 70 days.

CHAPTER 22  
DENTAL ASSISTANT RADIOGRAPHY QUALIFICATION  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—22.1(136C,153) Qualification required.** A person who is not otherwise actively licensed by the board shall not participate in dental radiography unless the person holds a current registration certificate or active nursing license and holds an active radiography qualification issued by the board, and a dentist provides general supervision.  
[ARC 8369B, IAB 12/16/09, effective 1/20/10]

**650—22.2(136C,153) Definitions.** As used in this chapter:

“*Dental radiography*” means the application of X-radiation to human teeth and supporting structures for diagnostic purposes only.

“*Radiography qualification*” means authorization to engage in dental radiography issued by the board.

**650—22.3(136C,153) Exemptions.** The following individuals are exempt from the requirements of this chapter.

**22.3(1)** A student enrolled in an accredited dental, dental hygiene, or dental assisting program, who, as part of the student’s course of study, applies ionizing radiation.

**22.3(2)** A person registered as a dental assistant trainee pursuant to 650—Chapter 20, who is engaging in on-the-job training in dental radiography and who is using curriculum approved by the board for such purpose.

**650—22.4(136C,153) Application requirements for dental radiography qualification.** Applications for dental radiography qualification must be filed on official board forms and include the following:

**22.4(1)** Evidence of one of the following requirements:

*a.* The applicant is a dental assistant trainee or registered dental assistant with an active registration status;

*b.* The applicant is a graduate of an accredited dental assisting program; or

*c.* The applicant is a nurse who holds an active Iowa license issued by the board of nursing.

**22.4(2)** The fee as specified in 650—Chapter 15.

**22.4(3)** Evidence of successful completion, within the previous two years, of a board-approved course of study in the area of dental radiography. The course of study must include application of radiation to humans pursuant to Iowa Code section 136C.3 and may be taken by the applicant:

*a.* On the job while under trainee status pursuant to 650—Chapter 20, using board-approved curriculum;

*b.* At a board-approved postsecondary school; or

*c.* From another program prior-approved by the board.

**22.4(4)** Evidence of successful completion of a board-approved examination in the area of dental radiography.

**22.4(5)** Any additional information required by the board relating to the character, education, and experience of the applicant as may be necessary to evaluate the applicant’s qualifications.

**650—22.5(136C,153) Examination requirements.** An applicant for dental assistant radiography qualification shall successfully pass a board-approved examination in dental radiography.

**22.5(1)** Examinations approved by the board are those administered by the board or board’s approved testing centers or, if taken after January 1, 1986, the Dental Assisting National Board Dental Radiation Health and Safety Examination.

**22.5(2)** A score of 75 or better on the board examination shall be considered successful completion of the examination. The board accepts the passing standard established by the Dental Assisting National Board for applicants who take the Dental Assisting National Board Radiation Health and Safety Examination.

**22.5(3)** Information on taking the examination may be obtained by contacting the board office at 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687.

**22.5(4)** A dental assistant must meet such other requirements as may be imposed by the board's approved dental assistant testing centers.

**22.5(5)** A dental assistant who fails to successfully complete the examination after two attempts will be required to submit, prior to each subsequent examination attempt, proof of additional formal education in dental radiography in a program approved by the board or sponsored by a school accredited by the Commission on Dental Accreditation of the American Dental Association.

**650—22.6(136C,153) Penalties.**

**22.6(1)** Any individual except a licensed dentist or a licensed dental hygienist who participates in dental radiography in violation of this chapter or Iowa Code chapter 136C shall be subject to the criminal and civil penalties set forth in Iowa Code sections 136C.4 and 136C.5.

**22.6(2)** Any licensee who permits a person to engage in dental radiography or a registrant who engages in dental radiography contrary to this chapter or Iowa Code chapter 136C shall be subject to discipline by the board pursuant to 650—Chapter 30.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code section 136C.3 and chapter 153.

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TITLE V  
PROFESSIONAL STANDARDS  
CHAPTER 25  
CONTINUING EDUCATION  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—25.1(153) Definitions.** For the purpose of these rules on continuing education, definitions shall apply:

*“Advisory committee.”* An advisory committee on continuing education shall be formed to review and advise the board with respect to applications for approval of sponsors or activities and requests for postapproval of activities. Its members shall be appointed by the board and consist of a member of the board, two licensed dentists with expertise in the area of professional continuing education, two licensed dental hygienists with expertise in the area of professional continuing education, and two registered dental assistants with expertise in the area of professional continuing education. The advisory committee on continuing education may tentatively approve or deny applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

*“Approved program or activity”* means a continuing education program activity meeting the standards set forth in these rules which has received advanced approval by the board pursuant to these rules.

*“Approved sponsor”* means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such person or organization may be deemed automatically approved provided they meet the continuing education guidelines of the board.

*“Board”* means the board of dental examiners.

*“Continuing dental education”* consists of education activities designed to review existing concepts and techniques and to update knowledge on advances in dental and medical sciences. The objective is to improve the knowledge, skills, and ability of the individual to deliver the highest quality of service to the public and professions.

Continuing dental education should favorably enrich past dental education experiences. Programs should make it possible for practitioners to attune dental practice to new knowledge as it becomes available. All continuing dental education should strengthen the skills of critical inquiry, balanced judgment and professional technique.

*“Hour”* of continuing education means one unit of credit which shall be granted for each hour of contact instruction and shall be designated as a “clock hour.” This credit shall apply to either academic or clinical instruction.

*“Licensee”* means any person licensed to practice dentistry or dental hygiene in the state of Iowa.

*“Registrant”* means any person registered to practice as a dental assistant in the state of Iowa.

**650—25.2(153) Continuing education requirements.**

**25.2(1)** Each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium renewal period a minimum of 30 hours of continuing education approved by the board. However, for the dental hygiene renewal period beginning July 1, 2006, and ending August 30, 2007, a dental hygienist shall complete a minimum of 12 hours of continuing education approved by the board.

**25.2(2)** The continuing education compliance period shall be the 24-month period commencing September 1 and ending on August 31 of the renewal cycle. However, for the dental hygiene renewal period beginning July 1, 2006, and ending August 30, 2007, the continuing education compliance period for dental hygienists shall be the 14-month period commencing July 1, 2006, and ending August 30, 2007. For the dental assistant renewal period beginning July 1, 2005, and ending August 30, 2007, the continuing education compliance period for dental assistants shall be the previous 26-month period. For the dental license renewal period beginning July 1, 2006, and ending August 30, 2008, the continuing education compliance period for dentists shall be the previous 26-month period.

**25.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously approved by the board or which otherwise meets the requirement herein and is approved by the board pursuant to subrule 25.3(5).

**25.2(4)** It is the responsibility of each licensee or registrant to finance the costs of continuing education.

**25.2(5)** Every licensee or registrant shall maintain a record of all courses attended by keeping the certificates of attendance for four years after the end of the year of attendance. The board reserves the right to require any licensee or registrant to submit the certificates of attendance for the continuing education courses attended.

**25.2(6)** Licensees and registrants are responsible for obtaining proof of attendance forms when attending courses. Clock hours must be verified by the sponsor with the issuance of proof of attendance forms to the licensee or registrant.

**25.2(7)** Each licensee or registrant shall file a signed continuing education reporting form reflecting the required minimum number of continuing education credit hours in compliance with this chapter and 650—Chapter 20. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license or renewal of dental assistant registration.

**25.2(8)** No carryover of credits from one biennial period to the next will be allowed.

**25.2(9)** Mandatory training for child abuse and dependent adult abuse reporting.

*a.* Licensees or registrants who regularly examine, attend, counsel or treat children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph “*f*” of this subrule.

*b.* Licensees or registrants who regularly examine, attend, counsel or treat adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph “*f*” of this subrule.

*c.* Licensees or registrants who regularly examine, attend, counsel or treat both children and adults in Iowa shall indicate on the renewal application completion of at least two hours of training on the identification and reporting of abuse in children and dependent adults in the previous five years or conditions for exemptions as identified in paragraph “*f*” of this subrule. Training may be completed through separate courses or in one combined course that includes curricula for identifying and reporting child abuse and dependent adult abuse. Up to three hours of continuing education may be awarded for taking a combined course.

*d.* The licensee or registrant shall maintain written documentation for five years after completion of the mandatory training, including program date(s), content, duration, and proof of participation. The board may audit this information at any time within the five-year period.

*e.* Training programs in child and dependent adult abuse identification and reporting that are approved by the board are those that use a curriculum approved by the abuse education review panel of the department of public health or a training program offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

*f.* Exemptions. Licensees and registrants shall be exempt from the requirement for mandatory training for identifying and reporting child and dependent adult abuse if the board determines that it is in the public interest or that at the time of the renewal the licensee or registrant is issued an extension or exemption pursuant to 650—25.7(153).

**25.2(10)** Licensees, faculty permit holders, and registrants shall furnish evidence of valid certification for cardiopulmonary resuscitation, which shall be credited toward the continuing education requirement for renewal of the license, faculty permit or registration. Such evidence shall be filed at the time of renewal of the license, faculty permit or registration. Credit hours awarded shall not exceed three continuing education credit hours per biennium. Valid certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent

basis, evidence that the licensee or registrant has been properly certified for each year covered by the renewal period. In addition, the course must include a clinical component.

**650—25.3(153) Approval of programs and activities.** A continuing education activity shall be qualified for approval if the board determines that:

**25.3(1)** It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee or registrant; and

**25.3(2)** It pertains to common subjects or other subject matters which relate integrally to the practice of dentistry, dental hygiene, or dental assisting which are intended to refresh and review, or update knowledge of new or existing concepts and techniques; and

**25.3(3)** It is conducted by individuals who have special education, training and experience to be considered experts concerning the subject matter of the program. The program must include a manual or written outline that substantively pertains to the subject matter of the program.

**25.3(4)** Activity types acceptable for continuing dental education credit may include:

*a.* Attendance at a multiply convention-type meeting. A multiday, convention-type meeting is held at a national, state, or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry. Effective July 1, 2000, attendees shall receive three hours of credit with the maximum allowed six hours of credit per biennium. Prior to July 1, 2000, attendees received five hours of credit with the maximum allowed ten hours of credit per biennium. Four hours of credit shall be allowed for presentation of an original table clinic at a convention-type meeting as verified by the sponsor when the subject matter conforms with 25.3(7). Attendees at the table clinic session of a dental, dental hygiene, or dental assisting convention shall receive two hours of credit as verified by the sponsor.

*b.* Postgraduate study relating to health sciences shall receive 15 credits per semester.

*c.* Successful completion of Part II of the National Board Examination for dentists, or the National Board Examination for dental hygienists, if taken five or more years after graduation, or a recognized specialty examination will result in 15 hours of credit.

*d.* Self-study activities shall result in a maximum of 12 hours of credit per biennium. Activity may include television viewing, video programs, correspondence work or research or computer CD-ROM programs that are interactive and require branching, navigation, participation and decision making on the part of the viewer.

*e.* Original presentation of continuing dental education courses shall result in credit double that which the participant receives. Credit will not be granted for repeating presentations within the biennium. Credit is not given for teaching that represents part of the licensee's or registrant's normal academic duties as a full-time or part-time faculty member or consultant.

*f.* Publications of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting shall result in a maximum of 5 hours per article, maximum of 20 hours per biennium.

*g.* Credit may be given for other continuing education activities upon request and approval by the Iowa board of dental examiners.

**25.3(5)** Prior approval of activities. An organization or person, other than an approved sponsor, that desires prior approval for a course, program or other continuing education activity or that desires to establish approval of the activity prior to attendance shall apply for approval to the board at least 90 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny the application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information. An application fee as specified in 650—Chapter 15 is required.

**25.3(6)** Postapproval of activities. A licensee or registrant seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved may submit to the board, within 60 days after completion of such activity, its dates, subjects, instructors, and their qualifications, the number of credit hours and proof of attendance. Within 90 days after receipt of such application, the board shall advise the licensee or registrant in writing by ordinary mail whether the activity is approved and the number of hours allowed. All requests may be reviewed

by the advisory committee on continuing education prior to final approval or denial by the board. A licensee or registrant not complying with the requirements of this paragraph may be denied credit for such activity. An application fee as specified in 650—Chapter 15 is required.

**25.3(7)** Subject matter acceptable for continuing dental education credit:

*a.* In order for specific course subject material to be acceptable for credit, the stated course objectives, overall curriculum design or course outlines shall clearly establish conformance with the following criteria:

- (1) The subject matter is of value to dentistry and directly applicable to oral health care.
- (2) The information presented enables the dental professional to enhance the dental health of the public.
- (3) The dental professional is able to apply the knowledge gained within the professional capacity of the individual.
- (4) The dental science courses include, but are not limited to, those within the eight recognized dental specialty areas and topics such as geriatric dentistry, hospital dentistry, oral diagnosis, oral rehabilitation and preventative dentistry.

*b.* Acceptable subject matter includes courses in patient treatment record keeping, risk management, sexual boundaries, communication, and OSHA regulations, and courses related to clinical practice. A course on Iowa jurisprudence that has been prior-approved by the board is also acceptable subject matter.

*c.* Unacceptable subject matter includes personal development, business aspects of practice, personnel management, government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course.

**25.3(8)** Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to Advisory Committee on Continuing Dental Education, Iowa Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—25.4(153) Approval of sponsors.**

**25.4(1)** An organization or person not previously approved by the board, which desires approval as a sponsor of courses, programs, or other continuing education activities, shall apply for approval to the board stating its education history for the preceding two years, including approximate dates, subjects offered, total hours of instruction presented, and names and qualifications of instructors. All applications shall be reviewed by the advisory committee on continuing education prior to final approval or denial by the board.

**25.4(2)** Prospective sponsors must apply to the Iowa dental board using a “Sponsor Approval Form” in order to obtain approved sponsor status. An application fee as specified in 650—Chapter 15 is required. Board-approved sponsors must pay the biennial renewal fee as specified in 650—Chapter 15 and file a sponsor recertification record report biennially.

**25.4(3)** The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees or registrants in attendance, maintain the written record for a minimum of five years, and submit the record upon the request of the board. The sponsor of the continuing education activity shall also provide proof of attendance and the number of credit hours awarded to the licensee or registrant who participates in the continuing education activity.

**25.4(4)** Sponsors must be formally organized and adhere to board rules for planning and providing continuing dental education activities. Programs sponsored by individuals or institutions for commercial or proprietary purposes, especially programs in which the speaker advertises or urges the use of any particular dental product or appliance, may be recognized for credit on a prior approval basis only. When courses are promoted as approved continuing education courses which do not meet the requirements as defined by the board, the sponsor will be required to refund the registration fee to the participants.

Approved sponsors may offer noncredit courses provided the participants have been informed that no credit will be given. Failure to meet this requirement may result in loss of approved sponsor status. [ARC 9218B, IAB 11/3/10, effective 12/8/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—25.5(153) Review of programs or sponsors.** The board on its own motion or at the recommendation of the advisory committee on continuing education may monitor or review any continuing education program or sponsors already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted to the program or may rescind the approval status of the sponsor.

**650—25.6(153) Hearings.** In the event of denial, in whole or in part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee, or registrant shall have the right, within 20 days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing with the proposed decision of the hearing officer. The decision of the board or decision of the hearing officer after adoption by the board shall be final.

**650—25.7(153) Extensions and exemptions.**

**25.7(1) *Illness or disability.*** The board may, in individual cases involving physical disability or illness, grant an exemption of the minimum education requirements or an extension of time within which to fulfill the same or make the required reports. No exemption or extension of time shall be granted unless written application is made on forms provided by the board and signed by the licensee or registrant and a physician licensed by the board of medical examiners. Extensions or exemptions of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which an exemption has been granted continues beyond the period granted, the licensee or registrant must reapply for an extension of the exemption. The board may, as a condition of the exemption, require the applicant to make up a certain portion or all of the minimum educational requirements.

**25.7(2) *Other extensions or exemptions.*** Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis. Licensees or registrants will be exempt from the continuing education requirements for:

- a. Periods that the person serves honorably on active duty in the military services;
- b. Periods that the person practices the person's profession in another state or district having a continuing education requirement and the licensee or registrant meets all requirements of that state or district for practice therein;
- c. Periods that the person is a government employee working in the person's licensed or registered specialty and assigned to duty outside the United States;
- d. Other periods of active practice and absence from the state approved by the board;
- e. The current biennium renewal period, or portion thereof, following original issuance of the license.
- f. For dental assistants registered pursuant to 650—20.6(153), the current biennium renewal period, or portion thereof, following original issuance of the registration.

**650—25.8(153) Exemptions for inactive practitioners.** A licensee or registrant who is not engaged in practice in the state of Iowa, residing in or out of the state of Iowa, may place the license or registration on inactive status by submitting a written renewal form and paying the required renewal fee. No continuing education hours are required to renew a license or registration on inactive status until reinstatement. A request to place a license or registration on inactive status shall also contain a statement that the applicant will not engage in the practice of the applicant's profession in Iowa without first complying with all rules governing reinstatement of inactive practitioners.

[ARC 8369B, IAB 12/16/09, effective 1/20/10]

**650—25.9(153) Reinstatement of inactive practitioners.** Inactive practitioners shall, prior to engaging in the practice of dentistry, dental hygiene, or dental assisting in the state of Iowa, satisfy the following requirements for reinstatement:

**25.9(1)** Submit written application for reinstatement to the board upon forms provided by the board; and

**25.9(2)** Furnish in the application evidence of one of the following:

*a.* The full-time practice of the profession in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under the rules; or

*b.* Completion of a total number of hours of approved continuing education computed by multiplying 15 by the number of years the license has been on inactive status for a dentist or dental hygienist, up to a maximum of 75 hours for a dentist or dental hygienist, or by multiplying 10 by the number of years the registration has been on inactive status for a dental assistant, up to a maximum of 50 hours for a dental assistant; or

*c.* Successful completion of CRDTS or other Iowa state license or registration examination conducted within one year immediately prior to the submission of such application for reinstatement; or

*d.* The licensee or registrant may petition the board to determine the continuing education credit hours required for reinstatement of the Iowa license or registration.

*e.* Evidence that the applicant possesses a current certificate in a nationally recognized course in cardiopulmonary resuscitation. The course must include a clinical component.

**25.9(3)** Applications must be filed with the board along with the following:

*a.* Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of the applicant's profession that the applicant has not been the subject of final or pending disciplinary action.

*b.* Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dentist, dental hygienist, or dental assistant.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 9218B, IAB 11/3/10, effective 12/8/10]

**650—25.10(153) Noncompliance with continuing dental education requirements.** It is the licensee's or registrant's personal responsibility to comply with these rules. The license or registration of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board or nonrenewal of the license or registration.

**650—25.11(153) Dental hygiene continuing education.** The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 1. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

1. Dental hygiene continuing education requirements and requests for approval of programs, activities and sponsors.

2. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.

3. Requests for exemptions from inactive dental hygiene practitioners.

4. Requests for reinstatement from inactive dental hygiene practitioners.

5. Appeals of denial of dental hygiene continuing education and conduct hearings as necessary.

These rules are intended to implement Iowa Code sections 147.10, 153.15A, and 153.39 and chapter 272C.

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CHAPTER 29  
SEDATION AND NITROUS OXIDE INHALATION ANALGESIA  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—29.1(153) Definitions.** For the purpose of these rules, relative to the administration of deep sedation/general anesthesia, moderate sedation, minimal sedation, and nitrous oxide inhalation analgesia by licensed dentists, the following definitions shall apply:

“*Antianxiety premedication*” means minimal sedation. A dentist providing minimal sedation must meet the requirements of rule 650—29.7(153).

“*ASA*” refers to the American Society of Anesthesiologists Patient Physical Status Classification System. Category 1 means normal healthy patients, and category 2 means patients with mild systemic disease. Category 3 means patients with moderate systemic disease, and category 4 means patients with severe systemic disease that is a constant threat to life.

“*Conscious sedation*” means moderate sedation.

“*Deep sedation/general anesthesia*” is a controlled state of unconsciousness, produced by a pharmacologic agent, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command.

“*Maximum recommended dose (MRD)*” means the maximum FDA-recommended dose of a drug as printed in FDA-approved labeling for unmonitored home use.

“*Minimal sedation*” means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. The term “minimal sedation” also means “antianxiety premedication” or “anxiolysis.” A dentist providing minimal sedation shall meet the requirements of rule 650—29.7(153).

“*Moderate sedation*” means a drug-induced depression of consciousness, either by enteral or parenteral means, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Prior to January 1, 2010, moderate sedation was referred to as conscious sedation.

“*Monitoring nitrous oxide inhalation analgesia*” means continually observing the patient receiving nitrous oxide and recognizing and notifying the dentist of any adverse reactions or complications.

“*Nitrous oxide inhalation analgesia*” refers to the administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

“*Pediatric*” means patients aged 12 or under.  
[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.2(153) Prohibitions.**

**29.2(1) *Deep sedation/general anesthesia.*** Dentists licensed in this state shall not administer deep sedation/general anesthesia in the practice of dentistry until they have obtained a permit as required by the provisions of this chapter.

**29.2(2) *Moderate sedation.*** Dentists licensed in this state shall not administer moderate sedation in the practice of dentistry until they have obtained a permit as required by the provisions of this chapter.

**29.2(3) *Nitrous oxide inhalation analgesia.*** Dentists licensed in this state shall not administer nitrous oxide inhalation analgesia in the practice of dentistry until they have complied with the provisions of rule 650—29.6(153).

**29.2(4) *Antianxiety premedication.*** Dentists licensed in this state shall not administer antianxiety premedication in the practice of dentistry until they have complied with the provisions of rule 650—29.7(153).

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.3(153) Requirements for the issuance of deep sedation/general anesthesia permits.**

**29.3(1)** A permit may be issued to a licensed dentist to use deep sedation/general anesthesia on an outpatient basis for dental patients provided the dentist meets the following requirements:

- a.* Has successfully completed an advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia; and
- b.* Has formal training in airway management; and
- c.* Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board.

**29.3(2)** A dentist using deep sedation/general anesthesia shall maintain a properly equipped facility. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

**29.3(3)** The dentist shall ensure that each facility where sedation services are provided is staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

**29.3(4)** A dentist administering deep sedation/general anesthesia must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course.

**29.3(5)** A dentist who is performing a procedure for which deep sedation/general anesthesia was induced shall not administer the general anesthetic and monitor the patient without the presence and assistance of at least two qualified auxiliary personnel in the room who are qualified under subrule 29.3(3).

**29.3(6)** A dentist qualified to administer deep sedation/general anesthesia under this rule may administer moderate sedation and nitrous oxide inhalation analgesia provided the dentist meets the requirements of rule 650—29.6(153).

**29.3(7)** A licensed dentist who has been utilizing deep sedation/general anesthesia in a competent manner for the five-year period preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in 29.3(2), 29.3(3), 29.3(4), and 29.3(5).

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.4(153) Requirements for the issuance of moderate sedation permits.**

**29.4(1)** A permit may be issued to a licensed dentist to use moderate sedation for dental patients provided the dentist meets the following requirements:

- a.* Has successfully completed a training program approved by the board that meets the American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and that consists of a minimum of 60 hours of instruction and management of at least 20 patients; and
- b.* Has formal training in airway management; or
- c.* Has submitted evidence of successful completion of an accredited residency program that includes formal training and clinical experience in moderate sedation, which is approved by the board.

**29.4(2)** A dentist utilizing moderate sedation shall maintain a properly equipped facility. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the

board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

**29.4(3)** The dentist shall ensure that each facility where sedation services are provided is staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

**29.4(4)** A dentist administering moderate sedation must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course.

**29.4(5)** A dentist who is performing a procedure for which moderate sedation is being employed shall not administer the pharmacologic agents and monitor the patient without the presence and assistance of at least one qualified auxiliary personnel in the room who is qualified under subrule 29.4(3).

**29.4(6)** A licensed dentist who has been utilizing moderate sedation on an outpatient basis in a competent manner for five years preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules 29.4(2), 29.4(3), 29.4(4) and 29.4(5).

**29.4(7)** Dentists qualified to administer moderate sedation may administer nitrous oxide inhalation analgesia provided they meet the requirement of rule 650—29.6(153).

**29.4(8)** If moderate sedation results in a general anesthetic state, the rules for deep sedation/general anesthesia apply.

**29.4(9)** A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

#### **650—29.5(153) Permit holders.**

**29.5(1)** No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation in a dental office for dental patients, unless the dentist possesses a current permit issued by the Iowa board of dental examiners. A dentist holding a permit shall be subject to review and facility inspection as deemed appropriate by the board.

**29.5(2)** An application for a deep sedation/general anesthesia permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 650—29.3(153).

**29.5(3)** An application for a moderate sedation permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 650—29.4(153).

**29.5(4)** If an applicant will be practicing at a facility that has been previously inspected and approved by the board, a provisional permit may be granted to the applicant upon the recommendation of the anesthesia credentials committee after review of the applicant's credentials.

**29.5(5)** Permits shall be renewed biennially at the time of license renewal following submission of proper application and may involve board reevaluation of credentials, facilities, equipment, personnel, and procedures of a previously qualified dentist to determine if the dentist is still qualified. The appropriate fee for renewal as specified in 650—Chapter 15 of these rules must accompany the application.

**29.5(6)** Upon the recommendation of the anesthesia credentials committee that is based on the evaluation of credentials, facilities, equipment, personnel and procedures of a dentist, the board may determine that restrictions may be placed on a permit.

**29.5(7)** The actual costs associated with the on-site evaluation of the facility shall be the primary responsibility of the licensee. The cost to the licensee shall not exceed the fee as specified in 650—Chapter 15.

**29.5(8)** Permit holders shall follow the American Dental Association's guidelines for the use of sedation and general anesthesia for dentists, except as otherwise specified in these rules.

**29.5(9)** A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

**650—29.6(153) Nitrous oxide inhalation analgesia.**

**29.6(1)** A dentist may use nitrous oxide inhalation analgesia sedation on an outpatient basis for dental patients provided the dentist:

- a. Has completed a board approved course of training; or
- b. Has training equivalent to that required in 29.6(1) “a” while a student in an accredited school of dentistry, and
- c. Has adequate equipment with fail-safe features and minimum oxygen flow which meets FDA standards.
- d. Has routine inspection, calibration, and maintenance on equipment performed every two years and maintains documentation of such, and provides documentation to the board upon request.
- e. Ensures the patient is continually monitored by qualified personnel while receiving nitrous oxide inhalation analgesia.

**29.6(2)** A dentist utilizing nitrous oxide inhalation analgesia shall be trained and capable of administering basic life support, as demonstrated by current certification in a nationally recognized course in cardiopulmonary resuscitation.

**29.6(3)** A licensed dentist who has been utilizing nitrous oxide inhalation analgesia in a dental office in a competent manner for the 12-month period preceding July 9, 1986, but has not had the benefit of formal training outlined in paragraph 29.6(1) “a” or 29.6(1) “b,” may continue the use provided the dentist fulfills the requirements of paragraphs 29.6(1) “c” and “d” and subrule 29.6(2).

**29.6(4)** A dental hygienist may administer nitrous oxide inhalation analgesia provided the administration of nitrous oxide inhalation analgesia has been delegated by a dentist and the hygienist meets the following qualifications:

- a. Has completed a board-approved course of training; or
- b. Has training equivalent to that required in 29.6(4) “a” while a student in an accredited school of dental hygiene.

**29.6(5)** A dental hygienist or registered dental assistant may monitor a patient under nitrous oxide inhalation analgesia provided all of the following requirements are met:

- a. The hygienist or registered dental assistant has completed a board-approved course of training or has received equivalent training while a student in an accredited school of dental hygiene or dental assisting;
- b. The task has been delegated by a dentist and is performed under the direct supervision of a dentist;
- c. Any adverse reactions are reported to the supervising dentist immediately; and
- d. The dentist dismisses the patient following completion of the procedure.

**29.6(6)** A dentist who delegates the administration of nitrous oxide inhalation analgesia in accordance with 29.6(4) shall provide direct supervision and establish a written office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise.

**29.6(7)** If the dentist intends to achieve a state of moderate sedation from the administration of nitrous oxide inhalation analgesia, the rules for moderate sedation apply.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.7(153) Minimal sedation.**

**29.7(1)** The term “minimal sedation” also means “antianxiety premedication” or “anxiolysis.”

**29.7(2)** If a dentist intends to achieve a state of moderate sedation from the administration of minimal sedation, the rules for moderate sedation shall apply.

**29.7(3)** A dentist utilizing minimal sedation and the dentist's auxiliary personnel shall be trained in and capable of administering basic life support.

**29.7(4)** Minimal sedation for adults.

*a.* Minimal sedation for adults is limited to a dentist's prescribing or administering a single enteral drug that is no more than 1.0 times the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. A single supplemental dose of the same drug may be administered, provided the supplemental dose is no more than one-half of the initial dose and the dentist does not administer the supplemental dose until the dentist has determined the clinical half-life of the initial dose has passed.

*b.* The total aggregate dose shall not exceed 1.5 times the MRD on the day of treatment.

*c.* For adult patients, a dentist may also utilize nitrous oxide inhalation analgesia in combination with a single enteral drug.

*d.* Combining two or more enteral drugs, excluding nitrous oxide, prescribing or administering drugs that are not recommended for unmonitored home use, or administering any intravenous drug constitutes moderate sedation and requires that the dentist must hold a moderate sedation permit.

**29.7(5)** Minimal sedation for ASA category 3 or 4 patients or pediatric patients.

*a.* Minimal sedation for ASA category 3 or 4 patients or pediatric patients is limited to a dentist's prescribing or administering a single dose of a single enteral drug that can be prescribed for unmonitored home use and that is no more than 1.0 times the maximum recommended dose.

*b.* A dentist may administer nitrous oxide inhalation analgesia for minimal sedation of ASA category 3 or 4 patients or pediatric patients provided the concentration does not exceed 50 percent and is not used in combination with any other drug.

*c.* The use of one or more enteral drugs in combination with nitrous oxide, the use of more than a single enteral drug, or the administration of any intravenous drug in ASA category 3 or 4 patients or pediatric patients constitutes moderate sedation and requires that the dentist must hold a moderate sedation permit.

**29.7(6)** A dentist providing minimal sedation shall not bill for non-IV conscious or moderate sedation.

**29.7(7)** A dentist shall ensure that any advertisements related to the availability of antianxiety premedication, anxiolysis, or minimal sedation clearly reflect the level of sedation provided and are not misleading.

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.8(153) Noncompliance.** Violations of the provisions of this chapter may result in revocation or suspension of the dentist's permit or other disciplinary measures as deemed appropriate by the board.

**650—29.9(153) Reporting of adverse occurrences related to sedation, nitrous oxide inhalation analgesia, and antianxiety premedication.**

**29.9(1) Reporting.** All licensed dentists in the practice of dentistry in this state must submit a report within a period of seven days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, or sedation. The report shall include responses to at least the following:

- a.* Description of dental procedure.
- b.* Description of preoperative physical condition of patient.
- c.* List of drugs and dosage administered.
- d.* Description, in detail, of techniques utilized in administering the drugs utilized.
- e.* Description of adverse occurrence:
  1. Description, in detail, of symptoms of any complications, to include but not be limited to onset, and type of symptoms in patient.
  2. Treatment instituted on the patient.
  3. Response of the patient to the treatment.

*f.* Description of the patient's condition on termination of any procedures undertaken.

**29.9(2) Failure to report.** Failure to comply with subrule 29.9(1), when the occurrence is related to the use of sedation, nitrous oxide inhalation analgesia, or antianxiety premedication, may result in the dentist's loss of authorization to administer sedation, nitrous oxide inhalation analgesia, or antianxiety premedication or in any other sanction provided by law.

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.10(153) Anesthesia credentials committee.**

**29.10(1)** The anesthesia credentials committee is a peer review committee appointed by the board to assist the board in the administration of this chapter. This committee shall be chaired by a member of the board and shall include at least six additional members who are licensed to practice dentistry in Iowa. At least four members of the committee shall hold deep sedation/general anesthesia or conscious sedation permits issued under this chapter.

**29.10(2)** The anesthesia credentials committee shall perform the following duties at the request of the board:

*a.* Review all permit applications and make recommendations to the board regarding those applications.

*b.* Conduct site visits at facilities under subrule 29.5(1) and report the results of those site visits to the board. The anesthesia credentials committee may submit recommendations to the board regarding the appropriate nature and frequency of site visits.

*c.* Perform professional evaluations and report the results of those evaluations to the board.

*d.* Other duties as delegated by the board or board chairperson.

**650—29.11(153) Renewal.** A permit to administer deep sedation/general anesthesia or moderate sedation shall be renewed biennially at the time of license renewal. Prior to July 1, 2008, permits expired on June 30 of every even-numbered year. A permit due to expire June 30, 2008, shall be automatically extended until August 30, 2008, and expire August 31, 2008. Beginning July 1, 2008, permits expire August 31 of every even-numbered year.

**29.11(1)** To renew a permit, a licensee must submit the following:

*a.* Evidence of renewal of ACLS certification.

*b.* A minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.

*c.* The appropriate fee for renewal as specified in 650—Chapter 15.

**29.11(2)** Failure to renew the permit prior to November 1 following its expiration shall cause the permit to lapse and become invalid for practice.

**29.11(3)** A permit that has been lapsed may be reinstated upon submission of a new application for a permit in compliance with rule 29.5(153) and payment of the application fee as specified in 650—Chapter 15.

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.12(153) Rules for denial or nonrenewal.** A dentist who has been denied a deep sedation/general anesthesia or moderate sedation permit or renewal may appeal the denial and request a hearing on the issues related to the permit or renewal denial by serving a notice of appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of the permit or renewal denial, or not more than 30 days following the date upon which the dentist was served notice if notification was made in the manner of service of an original notice. The hearing shall be considered a contested case proceeding and shall be governed by the procedures set forth in 650 IAC 51.

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.13(153) Record keeping.**

**29.13(1) Minimal sedation.** An appropriate sedative record must be maintained and must contain the names of all drugs administered, including local anesthetics and nitrous oxide, dosages, time

administered, and monitored physiological parameters, including oxygenation, ventilation, and circulation.

**29.13(2) Moderate or deep sedation.** The patient chart must include preoperative and postoperative vital signs, drugs administered, dosage administered, anesthesia time in minutes, and monitors used. Pulse oximetry, heart rate, respiratory rate, and blood pressure must be recorded continually until the patient is fully ambulatory. The chart should contain the name of the person to whom the patient was discharged.

**29.13(3) Nitrous oxide inhalation analgesia.** The patient chart must include the concentration administered and duration of administration, as well as any vital signs taken.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 8614B, IAB 3/10/10, effective 4/14/10]

These rules are intended to implement Iowa Code sections 153.33 and 153.34.

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[Filed ARC 0265C (Notice ARC 0128C, IAB 5/16/12), IAB 8/8/12, effective 9/12/12]

<sup>◇</sup> Two or more ARCs

<sup>1</sup> Effective date of 29.6(4) to 29.6(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held June 9, 1998.

<sup>2</sup> Effective date of 29.6(4) to 29.6(6) delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held September 15, 1999. Subrules 29.6(4) and 29.6(5) were rescinded IAB 2/9/00, effective 3/15/00; delay on subrule 29.6(6) lifted by the Administrative Rules Review Committee at its meeting held January 4, 2000, effective January 5, 2000.



CHAPTER 51  
CONTESTED CASES

[Ch 6 renumbered as Ch 51, IAC 9/20/78]  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

**650—51.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the board of dental examiners.

**650—51.2(17A) Definitions.** Except where otherwise specifically defined by law:

“*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 1998 Iowa Acts, chapter 1202, section 14.

“*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 the state or the respondent.

“*Presiding officer*” means the board of dental examiners or a panel of the board. In a disciplinary contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters, and assist and advise the board in presiding at the disciplinary contested case hearing.

“*Proposed decision*” means the hearing panel’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

**650—51.3(17A) Probable cause.** In the event the board finds there is probable cause for taking disciplinary action against a licensee following investigation of a complaint, the board shall order a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

**650—51.4(17A) Legal review.** Every statement of charges and notice of hearing prepared by the board shall be reviewed by the office of the attorney general before they are filed.

**650—51.5(17A) Time requirements.**

**51.5(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**51.5(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. 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.

**650—51.6(17A) Statement of charges and notice of hearing.**

**51.6(1) Delivery.** Delivery of the statement of charges and 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. Restricted certified mail, return receipt requested; or
- c. Publication, as provided in the Iowa Rules of Civil Procedure.

**51.6(2) Contents.** The statement of charges and 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. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board 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 board as the presiding officer; and
- i.* Notification of the time period in which a party may request pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 51.9(17A) that the presiding officer be an administrative law judge.

**650—51.7(17A) Legal representation.** Following the filing of the statement of charges and notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

**650—51.8(17A) Presiding officer in a disciplinary contested case.** The presiding officer in a disciplinary contested case shall be the board or a panel of the board. However, the board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 650—51.25(17A). In addition, an administrative law judge may assist and advise the board in presiding at the contested case hearing.

**650—51.9(17A) Presiding officer in a nondisciplinary contested case.**

**51.9(1)** Any party in a nondisciplinary contested case 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 board.

**51.9(2)** The board may deny the request only upon a finding that one or more of the following apply:

- a.* There is compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b.* An administrative law judge with the qualifications identified in subrule 51.9(4) is unavailable to hear the case within a reasonable time.
- 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.

**51.9(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 51.9(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**51.9(4)** An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

**51.9(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**650—51.10(17A) Disqualification.**

**51.10(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.

**51.10(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:

*a.* General direction and supervision of assigned investigators;

*b.* Unsolicited receipt of information which is relayed to assigned investigators;

*c.* Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

*d.* Exposure to factual information while performing other board 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 subrules 51.10(3) and 51.23(9).

**51.10(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.

**51.10(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 51.10(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in this case.

#### **650—51.11(17A) Consolidation—severance.**

**51.11(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.

**51.11(2)** *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

#### **650—51.12(17A) Pleadings.**

**51.12(1)** *Pleadings.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**51.12(2)** *Answer.* An answer shall be filed within 20 days of service of the statement of charges and notice of hearing.

*a.* An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the statement of charges. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. 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.

c. Any allegation in the statement of charges not denied in the answer is considered admitted.

**51.12(3) Amendment.** Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**650—51.13(17A) Service and filing.**

**51.13(1) Service—when required.** Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state or the board, 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.

**51.13(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.

**51.13(3) Filing—when required.** After the notice of hearing, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

**51.13(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687, 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.

**51.13(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 Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687, 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)

**650—51.14(17A) Discovery.**

**51.14(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.

**51.14(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 51.14(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**650—51.15(17A,272C) Issuance of subpoenas in a contested case.** Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearing and to compel the production of evidence deemed necessary in connection with a contested case. A subpoena issued by the board in a contested case may seek evidence whether or not it is privileged or confidential under law.

**51.15(1)** The executive director or designee may, upon the written request of the licensee or the state, issue a subpoena to compel the attendance of witnesses at depositions or hearing, and to compel the production of books, correspondence, papers, records, and other real evidence deemed necessary in connection with a contested case. A subpoena to produce evidence or to permit inspection may be joined with a subpoena to testify at a deposition or hearing, or may be issued separately. A request for a subpoena of mental health records must confirm that the conditions described in 650—subrule 31.5(1) have been satisfied prior to the issuance of the subpoena.

**51.15(2)** A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a.* The name, address and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in 650—subrule 31.5(1) have been satisfied.

**51.15(3)** Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the executive director or designee;
- j.* The date of issuance;
- k.* A return of service which shall be attached to the subpoena.

**51.15(4)** Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**51.15(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

**51.15(6)** Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

**51.15(7)** A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

**51.15(8)** If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person

under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

**650—51.16(17A) Motions.**

**51.16(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.

**51.16(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 the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**51.16(3)** The presiding officer may schedule oral argument on any motion.

**51.16(4)** Motions pertaining to the hearing 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 board or an order of the presiding officer.

**650—51.17(17A) Prehearing conference.**

**51.17(1)** Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date.

**51.17(2)** The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive director or administrative law judge may issue appropriate orders concerning:

- a. The possibility of settlement.
- b. The entry of a scheduling order to include deadlines for completion of discovery.
- c. Stipulations of law or fact.
- d. Stipulations on the admissibility of exhibits.
- e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the hearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.
- f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Exhibits, other than rebuttal exhibits, that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.
- g. Stipulations for waiver of any provision of law.
- h. Identification of matters which the parties intend to request be officially noticed.
- i. Consideration of any additional matters which will expedite the hearing.

**51.17(3)** Prehearing conferences may be conducted by telephone unless otherwise ordered.

**650—51.18(17A) Continuances.** Unless otherwise provided, applications for continuances shall be filed with the board. In the event the application for continuance is not contested, the executive director shall serve as presiding officer and issue the appropriate order. In the event the application for continuance is contested, the matter shall be heard by the board as presiding officer or may be delegated by the board to an administrative law judge.

**51.18(1)** A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than five working 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 two 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.

**51.18(2)** In determining whether to grant a continuance, the presiding officer may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The public interest;
- d.* The likelihood of informal settlement;
- e.* The existence of an emergency;
- f.* Any objection;
- g.* Any applicable time requirements;
- h.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- i.* The timeliness of the request; and
- j.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

#### **650—51.19(17A) Settlements.**

**51.19(1)** A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, the respondent, the board or its designee. Neither the board nor the respondent is required to participate in the informal settlement process. The executive director and chairperson of the board, or the chairperson's designee(s), shall have authority to negotiate on behalf of the board.

**51.19(2)** The full board shall not be involved in negotiation until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

**51.19(3)** Consent to negotiation by the respondent during informal settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chairperson or designee(s).

**51.19(4)** Negotiations for a proposed settlement shall be completed at least ten days prior to the hearing date set by the order for hearing. However, after consultation with the board chairperson or designee, the executive director shall have the power to grant additional time for continued negotiations in instances where additional time will likely lead to a satisfactory settlement prior to the hearing date.

**51.19(5)** No proposed settlement shall be presented to the board for approval until it is in final, written form signed by the respondent.

**51.19(6)** All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party. The proposed settlement shall be binding if approved by the board and signed by both the chairperson or the chairperson's designee and the respondent.

**51.19(7)** A board member who participates in the negotiation of a proposed settlement is not disqualified from participating in the adjudication of the contested case.

**51.19(8)** Consent to settlement negotiations by the respondent constitutes a waiver of any objection to the participation in the adjudication of the contested case of any board member who participated in the review of a settlement agreement which was not approved by the board.

**51.19(9)** A provision for payment of a quarterly fee as stated in 650—Chapter 15 or such other fees as specified by the board may be included in the settlement agreement.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 0265C, IAB 8/8/12, effective 9/12/12]

#### **650—51.20(17A) Hearing procedures.**

**51.20(1)** A hearing may be conducted before the board or a panel of not less than three members of the board at least two of whom are licensed by the board.

**51.20(2)** Hearings by the dental hygiene committee. In the event the licensee who is the subject of the contested case is a dental hygienist, the hearing shall be held before the dental hygiene committee, which shall constitute a panel of the board. The dental hygiene committee may in its discretion recommend to the board that the hearing be held instead before a panel of the board or full board.

**51.20(3)** When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

**51.20(4)** The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions, and may be assisted and advised by an administrative law judge.

**51.20(5)** All objections shall be timely made and stated on the record.

**51.20(6)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at their own expense.

**51.20(7)** 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.

**51.20(8)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**51.20(9)** Witnesses may be sequestered during the hearing.

**51.20(10)** The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

**51.20(11)** 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.

**51.20(12)** The board members and administrative law judge have the right to question a witness. Examination of witnesses by board members is subject to properly raised objections.

**51.20(13)** The hearing shall be open to the public unless the licensee requests that the hearing be closed.

#### **650—51.21(17A) Evidence.**

**51.21(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.

**51.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**51.21(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.

**51.21(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.

**51.21(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.

**51.21(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.

#### **650—51.22(17A) Default.**

**51.22(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.

**51.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

**51.22(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 board 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 650—51.26(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.

**51.22(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.

**51.22(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.

**51.22(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 236.

**51.22(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 650—51.25(17A).

**51.22(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.

**51.22(9)** 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 effective immediately, subject to a request for stay under rule 650—51.28(17A).

#### **650—51.23(17A) Ex parte communication.**

**51.23(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. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 51.10(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.

**51.23(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 before the board.

**51.23(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**51.23(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 communications shall be provided in compliance with rule 650—51.13(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**51.23(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.

**51.23(6)** The executive director 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 under rule 650—51.10(17A).

**51.23(7)** 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, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 650—51.18(17A).

**51.23(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.

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.

**51.23(9)** 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 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.

**51.23(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, suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board and its executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**650—51.24(17A) Recording costs.** Upon request, the board 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.

**650—51.25(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board 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.

**650—51.26(17A) Proposed and final decision.**

**51.26(1)** When a quorum of the board presides over the reception of the evidence at the hearing, the decision is a final decision.

**51.26(2)** When a panel of three specialists presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact but shall not include conclusions of law. A proposed decision of a hearing panel of specialists, together with a transcript of the proceedings and exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued. The parties shall have the opportunity to submit briefs and arguments to the board. The decision of the board is a final decision.

**51.26(3)** When a panel of three board members or the dental hygiene committee presides over the hearing, the panel shall issue a proposed decision which shall include proposed findings of fact, conclusions of law, and order. A proposed decision, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued. A proposed decision of a board hearing panel becomes a final decision without further proceedings unless appealed in accordance with the following provisions:

- a. The board may review a proposed decision on its own motion by serving a notice of appeal on the parties within 30 days after issuance of the proposed decision.
- b. A proposed decision may be appealed to the board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party.
- c. Following receipt of a notice of appeal, the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail.
- d. Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.
- e. The record on appeal shall be the entire record made before the hearing panel or administrative law judge. Costs associated with the appeal shall be paid by the appealing party.

**51.26(4)** At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

**51.26(5)** Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that:

- a. The evidence is material; and
- b. The evidence arose after completion of the original hearing; or
- c. Good cause exists for failure to present the evidence at the original hearing; and
- d. The party has not waived the right to present the additional 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 board may remand a case to the hearing panel for further hearing or may itself preside at the taking of additional evidence.

**650—51.27(17A) Applications for rehearing.**

**51.27(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**51.27(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 board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 51.27(5), the applicant requests an opportunity to submit additional evidence.

**51.27(3)** *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

**51.27(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.

**51.27(5)** *Additional evidence.* A request that additional evidence be considered on rehearing shall be governed by subrule 51.26(5).

**51.27(6)** *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**650—51.28(17A) Stays of board actions.**

**51.28(1)** *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

**51.28(2)** *When granted.* In determining whether to grant a stay, the board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c). The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay.

**650—51.29(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.

**650—51.30(17A) Emergency adjudicative proceedings.**

**51.30(1)** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, 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 board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the board 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 board is necessary to avoid the immediate danger.

**51.30(2)** Issuance of order.

*a.* An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action. The order is a public record.

*b.* The written emergency adjudicative order shall be immediately delivered to the person who is 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 board;
- (3) Certified mail to the last address on file with the board; or
- (4) 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 board orders be sent by fax and has provided a fax number for that purpose.

*c.* To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**51.30(3)** Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**51.30(4)** Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing, unless the person who is required to comply with the order is the party requesting the continuance.

**650—51.31(153) Judicial review.** Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 153.33(4) "g" and "h."

**650—51.32(17A) Notification of decision.** All parties to a contested case shall be promptly furnished with a copy of any decision or order either by personal delivery or by certified or first-class mailing. Delivery or first-class mailing of any decision or order to an attorney of record in a contested case hearing shall constitute notification of the respondent. Service by mail is complete upon mailing.

**650—51.33(17A) Publicizing disciplinary action.**

**51.33(1)** Final decisions of the board relating to licensee discipline shall be transmitted to the appropriate state and national professional associations and news media, which may include a newspaper(s) of general circulation, and to other news media, person or organization upon request.

**51.33(2)** The board shall notify other boards of dentistry in states where the respondent is also licensed of disciplinary action taken against the Iowa licensee.

**51.33(3)** The board shall notify the American Association of Dental Examiners of disciplinary action taken against an Iowa licensee.

**51.33(4)** The board shall, in accordance with federal law, notify the National Practitioners Data Bank of disciplinary action taken against an Iowa licensee.

**650—51.34(153) Reinstatement.**

**51.34(1)** Any person whose license has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

**51.34(2)** If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered pursuant to disciplinary action, an initial application for reinstatement may not be made until one year has elapsed from the date of the final order.

**51.34(3)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other disciplinary matters before the board.

**51.34(4)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

**51.34(5)** An application for reinstatement may include a request for a hearing on the issues raised on the application or any other information furnished to the board. The hearing on an application for reinstatement shall be a contested case proceeding within the meaning of Iowa Code section 17A.2(2).

**51.34(6)** The order to grant or deny reinstatement shall include findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 650—51.33(153).

**51.34(7)** A person whose license to practice dentistry or dental hygiene was revoked or suspended must successfully complete the examination required at the time of reinstatement for dental or dental hygiene licensure. The board may in its discretion require remedial training in addition to or in lieu of the examination requirements.

**650—51.35(272C) Disciplinary hearings—fees and costs.**

**51.35(1)** Fees. The fees related to a formal disciplinary action filed by the board are specified in 650—Chapter 15.

**51.35(2)** Failure of a licensee, registrant or permit holder to pay the fees and costs assessed in 650—Chapter 15 in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

[ARC 0265C, IAB 8/8/12, effective 9/12/12]

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 272C.5 and 272C.6.

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<sup>◇</sup> Two or more ARCs

CHAPTER 7  
HOSPITAL PHARMACY PRACTICE  
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 12]

**657—7.1(155A) Purpose and scope.** Hospital pharmacy means and includes a pharmacy licensed by the board and located within any hospital, health system, institution, or establishment which maintains and operates organized facilities for the diagnosis, care, and treatment of illnesses to which patients may or may not be admitted for overnight stay at the facility. A hospital is a facility licensed pursuant to Iowa Code chapter 135B. This chapter does not apply to a pharmacy located within such a facility for the purpose of providing outpatient prescriptions. A pharmacy providing outpatient prescriptions is and shall be licensed as a general pharmacy subject to the requirements of 657—Chapter 6. The requirements of these rules for hospital pharmacy practice apply to all hospitals, regardless of size or type, and are in addition to the requirements of 657—Chapter 8 and other rules of the board relating to services provided by the pharmacy.

[ARC 9911B, IAB 12/14/11, effective 1/18/12]

**657—7.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the items identified in this rule. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge. Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an “on call” basis. The pharmacist in charge, at a minimum, shall be responsible for:

1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services.
2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy and sufficient to ensure adequate levels of quality patient care services. Drug dispensing by nonpharmacists shall be minimized and eliminated wherever possible.
3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.
4. Ensuring that a pharmacist performs therapeutic drug monitoring and drug use evaluation.
5. Ensuring that a pharmacist provides drug information to other health professionals and to patients.
6. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.
7. Delivering drugs to the patient or the patient’s agent.
8. Ensuring that patient medication records are maintained as specified in rule 657—7.10(124,155A).
9. Training pharmacy technicians and pharmacy support persons.
10. Ensuring adequate and appropriate pharmacist oversight and supervision of pharmacy technicians and pharmacy support persons.
11. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.
12. Distributing and disposing of drugs from the pharmacy.
13. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.
14. Establishing and maintaining effective controls against the theft or diversion of prescription drugs, controlled substances, and records for such drugs.
15. Preparing a written operations manual governing pharmacy functions; periodically reviewing and revising those policies and procedures to reflect changes in processes, organization, and other pharmacy functions; and ensuring that all pharmacy personnel are familiar with the contents of the manual.

16. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.  
[ARC 8673B, IAB 4/7/10, effective 6/1/10]

**657—7.3(155A) Reference library.** References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one current reference from each of the following categories, including access to current periodic updates.

1. The Iowa Pharmacy Law and Information Manual.
2. A patient information reference that includes or provides patient information in compliance with rule 657—6.14(155A).
3. A reference on drug interactions.
4. A general information reference.
5. A drug equivalency reference.
6. An injectable-drug compatibility reference.
7. A drug identification reference to enable identification of drugs brought into the facility by patients.
8. The readily accessible telephone number of a poison control center that serves the area.
9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served. For example, the treatment of pediatric patients and oncology patients would require additional references unique to those specialties.

**657—7.4 and 7.5** Reserved.

**657—7.6(124,155A) Security.** The pharmacy shall be located in an area or areas that facilitate the provision of services to patients and shall be integrated with the facility's communication and transportation systems. The following conditions must be met to ensure appropriate control over drugs and chemicals in the pharmacy:

**7.6(1) Pharmacist responsibility.** Each pharmacist, while on duty, shall be responsible for the security of the pharmacy area, including provisions for effective control against theft of, diversion of, or unauthorized access to drugs or devices, controlled substances, records for such drugs, and patient records as provided in 657—Chapter 21. Policies and procedures shall identify the minimum amount of time that a pharmacist is available at the hospital pharmacy.

**7.6(2) Access when pharmacist absent.** When the pharmacist is absent from the facility, the pharmacy is closed. Policies and procedures shall be established that identify who will have access to the pharmacy when the pharmacy is closed and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during the pharmacist's absence.

*a.* The pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the pharmacy to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in paragraph "*d*" of this subrule may not be performed when the pharmacy is closed.

*b.* If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, only a certified pharmacy technician may assist another authorized, licensed health care professional to locate a drug or device pursuant to an emergent need. The pharmacy technician or the pharmacy support person may not dispense or deliver the drug, chemical, or device to the licensed health care professional. The licensed health care professional shall comply with established policies and procedures for obtaining drugs, devices, and chemicals when the pharmacy is closed. The licensed health care professional shall not ask or expect the pharmacy technician or the pharmacy support person to verify that the appropriate drug, chemical, or device has been obtained from the pharmacy.

*c.* A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was

closed and identifying each activity performed during that time period. Each entry shall be dated and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

*d.* Activities which shall not be performed by a pharmacy technician or a pharmacy support person when the pharmacist is absent from the facility include:

(1) Dispensing, delivering, or distributing any prescription drugs or devices to patients or others, including health care professionals, prior to pharmacist verification. Verification by a nurse or other licensed health care professional shall not supplant verification by a pharmacist.

(2) Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(3) Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.21(155A).

(4) Providing patient counseling, consultation, or drug information.

(5) Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

(6) Preparing compounded drug products for immediate administration by other hospital staff or health care professionals without verification by a pharmacist.

**7.6(3) Locked areas.** All pharmacy areas where drugs or devices are maintained or stored and where a pharmacist is not continually present shall be locked.

**7.6(4) Verification by pharmacist.** When the pharmacy is open, patient-specific drugs or devices shall not be distributed prior to the pharmacist's final verification and approval.

**7.6(5) Drugs or devices in patient care areas.** Drugs or devices maintained or stored in patient care areas shall be in locked storage unless the patient care unit is staffed by health care personnel and the medication area is visible to staff at all times.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9408B, IAB 3/9/11, effective 4/13/11]

**657—7.7(155A) Verification by pharmacist when pharmacy is closed.** A hospital pharmacy may contract with another pharmacy for remote pharmacist preview and verification of patient-specific drugs or devices ordered for a patient when the hospital pharmacy is closed. Contracted services may include pharmacist order entry pursuant to subrule 7.8(3). Pharmacies entering into a contract or agreement pursuant to this rule shall comply with the following requirements:

**7.7(1) Nonsupplanting service.** A contract or agreement for remote pharmacist services shall not relieve the hospital pharmacy from employing or contracting with a pharmacist to provide routine pharmacy services within the facility. The activities authorized by this rule are intended to supplement hospital pharmacy services when the pharmacy is closed and are not intended to eliminate the need for an on-site hospital pharmacy or pharmacist.

**7.7(2) Hospital-staff pharmacist.** Nothing in this rule shall prohibit a pharmacist employed by or contracting with a hospital pharmacy for on-site services from also providing remote preview and verification of patient-specific drugs or devices ordered for a patient when the hospital pharmacy is closed. A pharmacist previewing and verifying drug or device orders from a remote location shall have access to patient information pursuant to subrule 7.7(4) or 7.7(5), shall have access to the prescriber as provided in subrule 7.7(6), and shall be identified on the drug or device order as provided in subrule 7.7(7).

**7.7(3) Licenses required.** A pharmacy contracting with a hospital pharmacy to provide services pursuant to this rule shall maintain with the board a current Iowa pharmacy license. A remote pharmacist providing pharmacy services as an employee or agent of a contracting pharmacy pursuant to this rule shall be licensed to practice pharmacy in Iowa.

**7.7(4) Electronic access to patient information.** The remote pharmacist shall have secure electronic access to the hospital pharmacy's patient information system and to all other electronic systems that the on-site pharmacist has access to when the pharmacy is open. The remote pharmacist shall receive training in the use of the hospital's electronic systems.

**7.7(5) *Nonelectronic patient information.*** If a hospital's patient information is not maintained in an electronic data system or if the hospital pharmacy is not able to provide remote electronic access to the patient information system, the hospital pharmacy may petition for a waiver of subrule 7.7(4) pursuant to 657—Chapter 34 and this subrule. In addition to the information required pursuant to 657—Chapter 34, the petition for waiver shall identify the hospital pharmacy's alternative to the electronic sharing of patient information, shall explain in detail how the alternative method will ensure timely provision of patient information necessary for the remote pharmacist to effectively review the patient's drug regimen and history, and shall detail the processes involved in the alternative proposal including identification of all individuals involved in each of those processes.

**7.7(6) *Access to prescriber.*** The remote pharmacist shall be able to contact the prescriber to discuss any concerns identified during the pharmacist's review of the patient's information.

**7.7(7) *Pharmacist identified.*** The record of each patient-specific drug or device order processed pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the preview and verification of the order. The record of each patient-specific drug or device visually verified pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the visual verification of the product.

[ARC 9408B, IAB 3/9/11, effective 4/13/11]

**657—7.8(124,126,155A) Drug distribution and control.** Policies and procedures governing drug distribution and control shall be developed by the pharmacist in charge with input from other involved hospital staff such as physicians and nurses, from committees such as the pharmacy and therapeutics committee or its equivalent, and from any related patient care committee. It is essential that the pharmacist in charge or designee routinely be available to or on all patient care areas to establish rapport with the personnel and to become familiar with and contribute to medical and nursing procedures relating to drugs.

**7.8(1) *Drug preparation.*** The pharmacist shall institute the control procedures needed to ensure that patients receive the correct drugs at the proper times. Adequate quality assurance procedures shall be developed.

*a.* Hospitals shall utilize a unit dose dispensing system pursuant to rule 657—22.1(155A). All drugs dispensed by the pharmacist for administration to patients shall be in single unit or unit dose packages if practicable unless the dosage form or drug delivery device makes it impracticable to package the drug in a unit dose or single unit package.

(1) The pharmacist in charge shall establish policies and procedures that identify situations when drugs may be dispensed in other than unit dose or single unit packages outside the unit dose dispensing system.

(2) The need for nurses to manipulate drugs prior to their administration shall be minimized.

*b.* Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products in conformance with 657—Chapter 13.

*c.* Pharmacy personnel shall compound or prepare drug formulations, strengths, dosage forms, and packages useful in the care of patients.

**7.8(2) *Drug formulary.*** The pharmacist in charge shall maintain a current formulary of drug products approved for use in the institution and shall be responsible for specifications for those drug products and for selecting their source of supply.

**7.8(3) *Medication orders.*** Except as provided in subrule 7.8(14) or this subrule, a pharmacist shall receive a copy of an original written medication order for review except when the prescriber directly enters the medication order into an electronic medical record system or when the prescriber issues a verbal medication order directly to a registered nurse or pharmacist who then enters the order into an electronic medical record system.

*a. Verbal order.* The use of verbal orders shall be minimized. All verbal orders shall be read back to the prescriber, and the read back shall be documented with or on the order.

*b. Written order not entered by prescriber.* If an individual other than the prescriber enters a medication order into an electronic medical record system from an original written medication

order, the pharmacist shall review and verify the entry against the original written order before the drug is dispensed except for emergency use, when the pharmacy is closed, or as provided in rule 657—7.7(155A).

*c. Order entered when pharmacy closed.* When the pharmacy is closed, a registered nurse or pharmacist may enter a medication order into an electronic medical record system for the purpose of creating an electronic medication administration record and a pharmacist shall verify the entry against the original written medication order, if such written order exists, as soon as practicable.

*d. System security.* Hospitalwide and pharmacy stand-alone computer systems shall be secure against unauthorized entry. System login or access credentials issued to an authorized system user shall not be shared or disclosed to any other individual.

*e. Abbreviations and chemical symbols on orders.* The use of abbreviations and chemical symbols on medication orders shall be discouraged but, if used, shall be limited to abbreviations and chemical symbols approved by the appropriate patient care committee.

**7.8(4) Stop order.** A written policy or other system concerning stop orders shall be established to ensure that medication orders are not inappropriately continued.

**7.8(5) Emergency drug supplies and floor stock.** Supplies of drugs for use in medical emergencies shall be immediately available at each nursing unit or service area as specified in policies and procedures. Authorized stocks shall be periodically reviewed in a multidisciplinary manner. All drug storage areas within the hospital shall be routinely inspected to ensure that no outdated or unusable items are present and that all stock items are properly labeled and stored.

**7.8(6) Disaster services.** The pharmacy shall be prepared to provide drugs and pharmaceutical services in the event of a disaster affecting the availability of drugs or internal access to drugs or access to the pharmacy.

**7.8(7) Drugs brought into the institution.** The pharmacist in charge shall determine those circumstances when patient-owned drugs brought into the institution may be administered to a hospital patient and shall establish policies and procedures governing the use and security of drugs brought into the institution. Procedures shall address identification of the drug and methods for ensuring the integrity of the product prior to permitting its use by the patient. The use of patient-owned drugs shall be minimized to the greatest extent possible.

**7.8(8) Samples.** The use of drug samples within the institution shall be eliminated to the extent possible. Sample use is prohibited for hospital inpatient use. If the use of drug samples is permitted for hospital outpatients, that use of samples shall be controlled and the samples shall be distributed through the pharmacy or through a process developed in cooperation with the pharmacy and the institution's appropriate patient care committee, subject to oversight by the pharmacy.

**7.8(9) Investigational drugs.** If investigational drugs are used in the institution:

*a.* A pharmacist shall be a member of the institutional review board.

*b.* The pharmacy shall be responsible, in cooperation with the principal investigator, for providing information about investigational drugs used in the institution and for the distribution and control of those drugs.

**7.8(10) Hazardous drugs and chemicals.** The pharmacist, in cooperation with other hospital staff, shall establish policies and procedures for handling drugs and chemicals that are known occupational hazards. The procedures shall maintain the integrity of the drug or chemical and protect hospital personnel.

**7.8(11) Leave meds.** Labeling of prescription drugs for a patient on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 6.10(1). The dispensing pharmacy shall be responsible for packaging and labeling leave meds in compliance with this subrule.

**7.8(12) Discharge meds.** Drugs authorized for a patient being discharged from the facility shall be labeled in compliance with 657—subrule 6.10(1) before the patient removes those drugs from the facility premises. The dispensing pharmacy shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

**7.8(13) *Own-use outpatient prescriptions.*** If the hospital pharmacy dispenses own-use outpatient prescriptions, the pharmacy shall comply with all requirements of 657—Chapter 6 except rule 657—6.1(155A).

**7.8(14) *Influenza and pneumococcal vaccines.*** As authorized by federal law, a written or verbal patient-specific medication administration order shall not be required prior to administration to an adult patient of influenza and pneumococcal polysaccharide vaccines pursuant to physician-approved hospital policy and after the patient has been assessed for contraindications. Administration shall be recorded in the patient's medical record.

[ARC 8170B, IAB 9/23/09, effective 10/28/09; ARC 9911B, IAB 12/14/11, effective 1/18/12]

**657—7.9(124,155A) Drug information.** The pharmacy is responsible for providing the institution's staff and patients with accurate, comprehensive information about drugs and their use and shall serve as its center for drug information.

**7.9(1) *Staff education.*** The pharmacist shall keep the institution's staff well informed about the drugs used in the institution and their various dosage forms and packagings.

**7.9(2) *Patient education.*** The pharmacist shall help ensure that all patients are given adequate information about the drugs that they receive. This is particularly important for ambulatory, home care, and discharged patients. These patient education activities shall be coordinated with the nursing and medical staffs and patient education department, if any.

**657—7.10(124,155A) Ensuring rational drug therapy.** An important aspect of pharmaceutical services is that of maximizing rational drug use. The pharmacist, in concert with the medical staff, shall develop policies and procedures for ensuring the quality of drug therapy.

**7.10(1) *Patient profile.*** Sufficient patient information shall be collected, maintained, and reviewed by the pharmacist to ensure meaningful and effective participation in patient care. This requires that a drug profile be maintained for each patient receiving care at the hospital. A pharmacist-conducted drug history from patients may be useful in this regard.

*a.* Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice.

*b.* The pharmacist shall review each patient's current drug regimen and directly communicate any suggested changes to the prescriber.

**7.10(2) *Adverse drug events.*** The pharmacist, in cooperation with the appropriate patient care committee, shall develop a mechanism for the reporting and review, by the committee or other appropriate medical group, of adverse drug events. The pharmacist shall be informed of all reported adverse drug events occurring in the facility. Adverse drug events include but need not be limited to adverse drug reactions and medication errors.

**657—7.11(124,126,155A) Outpatient services.** No prescription drugs shall be dispensed to patients in a hospital outpatient setting. If a need is established for the dispensing of a prescription drug to an outpatient, a prescription drug order shall be provided to the patient to be filled at a pharmacy of the patient's choice.

**7.11(1) *Definitions.*** For the purposes of this rule, the following definitions shall apply:

*"Emergency department patient"* means an individual who is examined and evaluated in the emergency department.

*"Outpatient"* means an individual examined and evaluated by a prescriber who determined the individual's need for the administration of a drug or device, which individual presents to the hospital outpatient setting with a prescription or order for administration of a drug or device. "Outpatient" does not include an emergency department patient.

*"Outpatient medication order"* means a written order from a prescriber or an oral or electronic order from a prescriber or the prescriber's authorized agent for administration of a drug or device. An outpatient medication order may authorize continued or periodic administration of a drug or device for

a period of time and frequency determined by the prescriber or by hospital policy, not to exceed legal limits for the refilling of a prescription drug order.

**7.11(2) Administration in the outpatient setting.** Drugs shall be administered only to outpatients who have been examined and evaluated by a prescriber who determined the patient's need for the drug therapy ordered.

*a. Accountability.* A system of drug control and accountability shall be developed and supervised by the pharmacist in charge and the facility's outpatient services committee, or a similar group or person responsible for policy in the outpatient setting. The system shall ensure accountability of drugs incidental to outpatient nonemergency therapy or treatment. Drugs shall be administered only in accordance with the system.

*b. Controlled substances.* Controlled substances maintained in the outpatient setting are kept for use by or at the direction of prescribers for the nonemergency therapy or treatment of outpatients. In order to receive a controlled substance, a patient shall be examined in the outpatient setting or in an alternate practice setting or office by a prescriber who shall determine the patient's need for the drug. If the patient is examined in a setting outside the outpatient setting, the prescriber shall provide the patient with a written prescription or order to be presented at the hospital outpatient setting.

*c. Outpatient medication orders.* A prescriber may authorize, by outpatient medication order, the periodic administration of a drug to an outpatient.

(1) Schedule II controlled substance. An outpatient medication order for administration of a Schedule II controlled substance shall be written and, except as provided in rule 657—10.25(124) regarding the issuance of multiple Schedule II prescriptions, may authorize the administration of an appropriate amount of the prescribed substance for a period not to exceed 90 days from the date ordered.

(2) Schedule III, IV, or V controlled substance. An outpatient medication order for administration of a Schedule III, IV, or V controlled substance shall be written and may be authorized for a period not to exceed six months from the date ordered.

(3) Noncontrolled substance. An outpatient medication order for administration of a noncontrolled prescription drug may be authorized for a period not to exceed 18 months from the date ordered.

[ARC 8909B, IAB 6/30/10, effective 8/4/10; ARC 0243C, IAB 8/8/12, effective 9/12/12]

**657—7.12(124,126,155A) Drugs in the emergency department.** Drugs maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department. Drugs shall be administered or dispensed only to emergency department patients. For the purposes of this rule, "emergency department patient" means an individual who is examined and evaluated in the emergency department.

**7.12(1) Accountability.** A system of drug control and accountability shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in the emergency department. The system shall identify drugs of the nature and type to meet the immediate needs of emergency department patients. Drugs shall be administered or dispensed only in accordance with the system.

**7.12(2) Controlled substances.** Controlled substances maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department.

*a.* In order to receive a controlled substance, a patient shall be examined in the emergency department by a prescriber who shall determine the need for the drug. It is not permissible under state and federal regulations for a prescriber to see a patient outside the emergency department setting, or talk to the patient on the telephone, and then proceed to call the emergency department and order the administration of a stocked controlled substance upon the patient's arrival at the emergency department except as provided in paragraph 7.12(2) "c" or "d."

*b.* A prescriber may authorize, without again examining the patient, the administration of additional doses of a previously authorized drug to a patient presenting to the emergency department within 24 hours of the patient's examination and treatment in the emergency department.

*c.* In an emergency situation when a health care practitioner authorized to prescribe controlled substances is not available on site, and regardless of the provisions of paragraph 7.12(2) "a," the

emergency department nurse may examine the patient in the emergency department and contact the on-call prescriber. The on-call prescriber may then authorize the nurse to administer a controlled substance to the patient pending the arrival of the prescriber at the emergency department. As soon as possible, the prescriber shall examine the patient in the emergency department and determine the patient's further treatment needs.

*d.* In an emergency situation when a health care practitioner authorized to prescribe controlled substances examines a patient in the prescriber's office and determines a need for the administration of a controlled substance, and regardless of the provisions of paragraph 7.12(2) "a," the prescriber may direct the patient to present to the emergency department, with a valid written prescription or order for the administration of the controlled substance. As soon as possible, the prescriber shall examine the patient in the emergency department and determine the patient's further treatment needs.

**7.12(3) Drug dispensing.** In those facilities with 24-hour pharmacy services, only a pharmacist or prescriber may dispense any drugs to an emergency department patient. In those facilities located in an area of the state where 24-hour outpatient or 24-hour on-call pharmacy services are not available within 15 miles of the hospital, and which facilities are without 24-hour outpatient pharmacy services, the provisions of this rule shall apply.

*a. Pharmacist in charge responsibility.* The pharmacist in charge is responsible for maintaining accurate records of dispensing of drugs from the emergency department and for ensuring the accuracy of prepackaged drugs and the complete and accurate labeling of prepackaged drugs pursuant to this paragraph.

(1) Prepackaging. Except as provided in subrule 7.12(4), drugs dispensed to an emergency department patient in greater than a 24-hour supply may be dispensed only in prepackaged quantities not to exceed a 72-hour supply or the minimum prepackaged quantity in suitable containers, except that a seven-day supply of doxycycline provided through the department of public health pursuant to the crime victim compensation program of the Iowa department of justice may be dispensed for the treatment of a victim of sexual assault. Prepackaged drugs shall be prepared pursuant to the requirements of rule 657—22.3(126).

(2) Labeling. Drugs dispensed pursuant to this paragraph shall be appropriately labeled as required in paragraph 7.12(3) "b," including necessary auxiliary labels.

*b. Prescriber responsibility.* Except as provided in subrule 7.12(4), a prescriber who authorizes dispensing of a prescription drug to an emergency department patient is responsible for the accuracy of the dispensed drug and for the accurate completion of label information pursuant to this paragraph.

(1) Labeling. Except as provided in subrule 7.12(4), at the time of delivery of the drug the prescriber shall appropriately complete the label such that the dispensing container bears a label with at least the following information:

1. Name and address of the hospital;
2. Date dispensed;
3. Name of prescriber;
4. Name of patient;
5. Directions for use;
6. Name and strength of drug.

(2) Delivery of drug to patient. Except as provided in subrule 7.12(4), the prescriber, or a licensed nurse under the supervision of the prescriber, shall give the appropriately labeled, prepackaged drug to the patient or patient's caregiver. The prescriber, or a licensed nurse under the supervision of the prescriber, shall explain the correct use of the drug and shall explain to the patient that the dispensing is for an emergency or starter supply of the drug. If additional quantities of the drug are required to complete the needed course of treatment, the prescriber shall provide the patient with a prescription for the additional quantities.

**7.12(4) Use of InstyMeds dispensing system.** A hospital located in an area of the state where 24-hour outpatient pharmacy services are not available within 15 miles of the hospital may implement the InstyMeds dispensing system in the hospital emergency department only as provided by this subrule.

- a. Persons with access to the dispensing machine for the purposes of stocking, inventory, and monitoring shall be limited to pharmacists, pharmacy technicians, and pharmacist-interns.
- b. The InstyMeds dispensing system shall be used only in the hospital emergency department for the benefit of patients examined or treated in the emergency department.
- c. The dispensing machine shall be located in a secure and professionally appropriate environment.
- d. The stock of drugs maintained and dispensed utilizing the InstyMeds dispensing system shall be limited to acute care drugs provided in appropriate quantities for a 72-hour supply or the minimum commercially available package size, except that antimicrobials may be dispensed in a quantity to provide the full course of therapy.
- e. Drugs dispensed utilizing the InstyMeds dispensing system shall be appropriately labeled as provided in 657—subrule 6.10(1), paragraphs “a” through “g.”
- f. Prior to authorizing the dispensing of a drug utilizing the InstyMeds dispensing system, the prescriber shall offer the patient the option of being provided a prescription that may be filled at the pharmacy of the patient’s choice.
- g. When appropriate for an acute condition, the prescriber shall provide to the patient or the patient’s caregiver a prescription for the remainder of drug therapy beyond the supply available utilizing the InstyMeds dispensing system. During consultation with the patient or the patient’s caregiver, the prescriber shall clearly explain the appropriate use of the drug supplied, the need to have a prescription for any additional supply of the drug filled at a pharmacy of the patient’s choice, and the need to complete the full course of drug therapy.
- h. The pharmacy shall, in conjunction with the hospital emergency department, implement policies and procedures to ensure that a patient utilizing the InstyMeds dispensing system has been positively identified.
- i. The hospital pharmacist shall review the printout of drugs provided utilizing the InstyMeds dispensing system within 24 hours unless the pharmacy is closed, in which case the printout shall be reviewed during the first day the pharmacy is open following the provision of the drugs. The purpose of the review is to identify any dispensing errors, to determine dosage appropriateness, and to complete a retrospective drug use review of any antimicrobials dispensed in a quantity greater than a 72-hour supply. Any discrepancies found shall be addressed by the pharmacy’s continuous quality improvement program.

[ARC 8909B, IAB 6/30/10, effective 8/4/10]

**657—7.13(124,155A) Records.** Every inventory or other record required to be kept under this chapter or other board rules or under Iowa Code chapters 124 and 155A shall be kept by the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of such inventory or record unless a longer retention period is specified for the particular inventory or record.

**7.13(1) Medication order information.** Each original medication order contained in inpatient records shall bear the following information:

- a. Patient name and identification number;
- b. Drug name, strength, and dosage form;
- c. Directions for use;
- d. Date ordered;
- e. Practitioner’s signature or electronic signature or that of the practitioner’s authorized agent.

**7.13(2) Medication order maintained.** The original medication order shall be maintained with the medication administration record in the medical records of the patient following discharge.

**7.13(3) Documentation of drug administration.** Each dose of medication administered shall be properly recorded in the patient’s medical record.

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, 155A.31, and 155A.33 through 155A.36.

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<sup>◇</sup> Two or more ARCs

CHAPTER 24  
PHARMACY INTERNET SITES

**657—24.1(155A) Purpose and scope.** In the interests of public information, health, and safety, and pursuant to the provisions of Iowa Code section 155A.13B, this chapter establishes requirements for the Internet sale of prescription drugs by pharmacies and for VIPPS accreditation. This chapter identifies specific information that must be displayed on a pharmacy Internet site and establishes requirements for site registration. The requirements of this chapter apply to any Internet pharmacy and pharmacy Internet site as defined in rule 657—24.2(155A).

[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.2(155A) Definitions.** For the purposes of this chapter, the following definitions shall apply:

“*Board*” means the Iowa board of pharmacy.

“*DEA*” means the U.S. Department of Justice, Drug Enforcement Administration.

“*Electronic mail*” or “*e-mail*” means any message transmitted through the Internet, including but not limited to messages transmitted from or to any address affiliated with an Internet site.

“*Internet*” means the federated international system that is composed of allied electronic communication networks linked by telecommunication channels, that uses standardized protocols, and that facilitates electronic communication services, including but not limited to use of the World Wide Web; the transmission of electronic mail or messages; the transfer of files and data or other electronic information; and the transmission of voice, image, and video.

“*Internet broker*” means an entity that serves as an agent or intermediary or other capacity that causes the Internet to be used to bring together a buyer and seller.

“*Internet pharmacy*” means a pharmacy that delivers, distributes, or dispenses, by means of an Internet sale pursuant to a prescription drug order, a prescription product to a patient located in Iowa, whether the patient is human or animal. “Internet pharmacy” does not include a pharmacy that maintains an Internet site for the convenience of the pharmacy’s patients to request a prescription refill or to request or retrieve drug information but requires that the filled prescription be delivered to the patient from the licensed physical location of the pharmacy.

“*Internet sale*” means a transaction, initiated via an Internet site, which includes the order of and the payment for a prescription drug product.

“*Internet site*” means a specific location on the Internet that is determined by Internet protocol numbers, by a domain name, or by both, including but not limited to domain names that use the designations “.com”, “.edu”, “.gov”, “.org”, and “.net”.

“*Iowa PMP*” means the prescription monitoring program established pursuant to 657—Chapter 37.

“*NABP*” means the National Association of Boards of Pharmacy.

“*Prescription product*” means any prescription drug or device, including any controlled substance, as those terms are defined in Iowa Code section 155A.3.

“*Vet-VIPPS accreditation*” means that a pharmacy which dispenses prescription products for companion and non-food-producing animals has been evaluated by NABP and has been determined to be properly licensed and in compliance with federal and state laws, rules and regulations regarding the operation of a veterinary pharmacy.

“*VIPPS*” means verified Internet pharmacy practice site.

“*VIPPS accreditation*” means that a pharmacy has been evaluated by NABP and has been determined to be in compliance with federal and state laws, rules and regulations regarding the operation of a pharmacy and with NABP evaluation criteria. “VIPPS accreditation” includes Vet-VIPPS accreditation.

“*VIPPS seal*” means the symbol provided by NABP to a pharmacy for display on the pharmacy’s Internet site evidencing the pharmacy’s VIPPS accreditation.

[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.3(155A) General requirements for Internet pharmacy.** A pharmacy operating within or outside Iowa shall not provide any prescription product to any patient within Iowa through an Internet site or e-mail unless the pharmacy is in compliance with the provisions of this chapter.

**24.3(1) Pharmacy license.** A pharmacy, prior to providing any prescription drug, including any controlled substance, to any patient within Iowa, shall apply for, obtain, and maintain a pharmacy license pursuant to the provisions of rule 657—8.35(155A).

**24.3(2) Pharmacist license.** A pharmacist practicing in a pharmacy that provides any prescription drug, including any controlled substance, to any patient within Iowa shall be licensed by the pharmacist licensing authority in the state wherein the pharmacist practices.

**24.3(3) Iowa PMP.** A pharmacy, wherever located, that provides any controlled substance included in Schedules II through IV of Iowa Code chapter 124 to any patient within Iowa, unless the pharmacy is exempt from reporting pursuant to 657—subrule 37.3(1), shall report those dispensed prescriptions to the Iowa PMP as provided in rule 657—37.3(124).

**24.3(4) VIPPS accreditation.** An Internet pharmacy that provides any prescription drugs, including controlled substances, to any patient within Iowa shall obtain and maintain VIPPS accreditation and shall include evidence of such VIPPS accreditation on any Internet site identifying the pharmacy as provided in rule 657—24.7(155A).

[ARC 9913B, IAB 12/14/11, effective 2/1/12; ARC 0242C, IAB 8/8/12, effective 1/1/13]

**657—24.4 and 24.5** Reserved.

**657—24.6(155A) Prescription requirements.** A prescription drug order issued by an authorized prescriber shall comply with the requirements for a prescription identified in Iowa Code section 155A.27. No prescription product may be delivered, distributed, or dispensed by means of, through, or on behalf of an Internet site or by means of an e-mail communication without a valid prescription drug order.

**24.6(1) Prescriber licensed.** A prescriber who authorizes a prescription drug order through an Internet site or e-mail for a patient located in Iowa shall:

- a. Be licensed by the licensing authority of the state in which the prescriber practices,
- b. Be in compliance with all applicable federal and state laws, rules and regulations relating to the prescriber's practice, and
- c. If the prescription drug order authorizes the dispensing of a controlled substance, be registered to prescribe controlled substances by the DEA and, if required, by the appropriate state agency or board.

**24.6(2) Pharmacist responsibility.** A licensed pharmacist practicing within or outside Iowa shall not fill a prescription drug order for a patient located in Iowa if the pharmacist knows or reasonably should have known that the prescription drug order was issued under both of the following conditions:

- a. Solely on the basis of an Internet questionnaire, an Internet consultation, or a telephonic consultation, and
- b. Without a valid patient-practitioner relationship.

[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.7(155A) Internet site registration.** An Internet site that intends to display, advertise, or solicit the Internet sale of prescription products to patients in Iowa shall apply for, obtain, and maintain a pharmacy Internet site registration through the board. A pharmacy Internet site registration shall be issued to the Internet site by the domain name and the owner of the Internet site.

**24.7(1) Application for registration.** Application for registration and registration renewal shall be on forms provided by the board. The application form shall include the following information:

- a. The common or searchable name, if such name exists, of the Internet site.
- b. The domain name including "dot" extension of the Internet site.
- c. The Internet protocol number of the Internet site.
- d. The name and address of the owner or owners of the Internet site. If the owner is a corporation, the names and addresses of the officers and directors of the corporation shall be included. If the owner is a partnership or limited partnership, the names and addresses of all partners shall be included.

*e.* The name, address, and Iowa pharmacy license number of each Internet pharmacy that will be identified on the Internet site.

*f.* The signature of the owner of the Internet site or the signature of the owner's, partnership's or corporation's authorized representative and the date the application is signed.

**24.7(2) *Timeliness of application.*** An application for pharmacy Internet site registration or registration renewal shall be timely submitted to the board.

*a. Existing Internet site.* If the application is for registration of a pharmacy Internet site that is operational on or before February 1, 2012, the application and registration fee shall be due no later than May 1, 2012.

*b. New Internet site.* If the application is for registration of a new pharmacy Internet site that was not operational on or before February 1, 2012, the application and registration fee shall be due no less than 30 days prior to implementation of the Internet site.

*c. Renewal.* If the application is for renewal of an existing pharmacy Internet site registration, the application and registration fee shall be due prior to expiration of the current registration.

**24.7(3) *Renewal of registration.*** A pharmacy Internet site registration shall be annually renewed prior to expiration of the registration on December 31. Registration renewal shall require the completion of a renewal application form provided by the board. A completed application shall include payment of the renewal fee and any applicable late payment penalty fee. A registration that is not timely renewed shall be delinquent unless previously canceled by written notification to the board. If a pharmacy Internet site registration is canceled or delinquent, the Internet site shall discontinue association with any Internet pharmacy and shall discontinue the display, advertising, or solicitation of the Internet sale of prescription products to patients in Iowa.

**24.7(4) *Fees and term of registration.*** The following fees, as applicable, shall accompany an application for pharmacy Internet site registration or registration renewal:

*a. Initial registration.* The fee for initial registration of a pharmacy Internet site shall be \$150. All registrations shall expire annually on December 31.

*b. Registration renewal.* The fee for renewal of a pharmacy Internet site registration shall be \$150. Failure to renew a registration prior to expiration shall require payment of a late payment fee in the amount of \$150 in addition to the renewal fee. Failure to renew a registration within 30 days following expiration shall require payment of a late payment fee in the amount of \$250 in addition to the renewal fee. Failure to renew a registration within 60 days following expiration shall require payment of a late payment fee in the amount of \$350 in addition to the renewal fee. Failure to renew a registration within 90 days following expiration shall require payment of a late payment fee in the amount of \$450 in addition to the renewal fee. The total renewal and late payment fee shall not exceed \$600. Failure to timely renew a registration may subject the registrant to disciplinary action.

**24.7(5) *Internet site registration changes.*** The board shall be notified as provided in this subrule within ten days of any of the following:

*a.* Change of domain name or Internet protocol number. Change of domain name or Internet protocol number requires completion and submission of a new registration application and payment of the registration fee within ten days.

*b.* Change of ownership. Change of ownership requires completion and submission of a new registration application and payment of the registration fee within ten days. The sale or transfer of all or a portion of the stock of a corporation, or a change of the individual partners comprising a partnership, shall not constitute a change of ownership provided the corporation or partnership that owns the Internet site continues to exist as the owner of the Internet site following the transaction.

*c.* Discontinuation of the registered pharmacy Internet site. Prior to discontinuation of a registered pharmacy Internet site but no later than 30 days prior to removal of the pharmacy Internet site from public access, written notification shall be provided to the board. The written notice shall include the domain name and the Internet protocol number of the Internet site, the registration number issued by the board to the pharmacy Internet site, the date the Internet site will be removed from Internet access, the reason for discontinuation of the Internet site, the date of the notice, and the signature of the owner or the owner's

authorized representative. If discontinuation of the Internet site also involves the sale or closing of a licensed pharmacy, the closing pharmacy shall comply with all requirements of 657—subrule 8.35(7). [ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.8(155A) Internet site information.** A pharmacy Internet site shall display on the home page of the Internet site or on a page directly linked to the home page the information identified in this rule. If the information is displayed on a page directly linked to the home page, the link on the home page shall be visible and clearly and conspicuously identified.

**24.8(1) Registration number.** The Internet site registration number shall be displayed. Display shall consist of the following statement or a statement substantially equivalent to the following statement: “In compliance with Iowa Code section 155A.13B and 657 IAC Chapter 24, this internet site is registered with the Iowa Board of Pharmacy, registration number \_\_\_\_.”

**24.8(2) Pharmacy identification.** The following information shall be displayed for each pharmacy that delivers, distributes, or dispenses prescription drugs pursuant to orders made on, through, or on behalf of the Internet site:

- a. The name of the pharmacy.
- b. The address of the licensed physical location of the pharmacy.
- c. The telephone number of the pharmacy.
- d. The pharmacy license number issued to the pharmacy by the board.

**24.8(3) VIPPS accreditation.** The VIPPS seal shall be prominently displayed. The following links to information regarding the VIPPS accreditation maintained by each Internet pharmacy associated with the Internet site shall also be displayed.

- a. A link to the NABP’s VIPPS accreditation verification site.
- b. A link to the certification issued by NABP which identifies the individual Internet pharmacy as a VIPPS-accredited site.

**24.8(4) DEA requirements relating to controlled substances.** A pharmacy Internet site identifying any pharmacy that dispenses controlled substances through the Internet site shall, in addition to the requirements of this rule for the posting of Internet site information, comply with DEA disclosure requirements found at 21 CFR 1304.45.

[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.9 and 24.10** Reserved.

**657—24.11(155A) Records.** Records regarding the operation of a pharmacy and the dispensing of prescription products to patients within Iowa shall be maintained by each Internet pharmacy pursuant to the requirements of federal and state laws, rules and regulations. Required pharmacy and inventory records shall be available for inspection and copying by the board or its representative for at least two years from the date of the record or inventory unless a longer retention period is specified for a particular record or inventory.

[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.12(155A) Pharmacy liability.** An Internet pharmacy shall not disclaim, limit, or waive any liability to which the pharmacy otherwise is subject under law for the act or practice of selling, dispensing, distributing, or delivering prescription products to any patient in Iowa based on the patient’s submission of the purchase order or refill request for the prescription product through an Internet site or by e-mail.

[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.13(155A) Application denial.**

**24.13(1)** The executive director or designee may deny an application for registration or renewal of a registration as a pharmacy Internet site for any violation of the laws of this state, another state, or the United States relating to prescription products, Internet pharmacy practices, or the distribution of prescription products utilizing the Internet or e-mail or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

**24.13(2)** An applicant whose application has been denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.  
[ARC 9913B, IAB 12/14/11, effective 2/1/12]

**657—24.14(155A) Discipline.**

**24.14(1)** *Internet site.* The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription products, Internet pharmacy practices, or the distribution of prescription products utilizing the Internet or e-mail or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board. The board may impose on the pharmacy Internet site registrant any disciplinary sanctions allowed by law as may be appropriate including, but not limited to, revocation of the registration, suspension of the registration for a specified period or until further order of the board, nonrenewal of a registration, the imposition of civil penalties not to exceed \$25,000, or issuance of a citation and warning.

**24.14(2)** *Pharmacy, pharmacist, and other pharmacy staff.* The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription products, Internet pharmacy practices, or the distribution of prescription products utilizing the Internet or e-mail or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board. The board may impose on the pharmacy, pharmacist, or other registered pharmacy staff any disciplinary sanctions allowed by law as may be appropriate or as may be identified in Iowa law or rules of the board regarding sanctions that may be imposed on the specific license or registration.  
[ARC 9913B, IAB 12/14/11, effective 2/1/12]

These rules are intended to implement Iowa Code section 155A.13B.

[Filed ARC 9913B (Notice ARC 9789B, IAB 10/5/11), IAB 12/14/11, effective 2/1/12]

[Filed ARC 0242C (Notice ARC 0074C, IAB 4/4/12), IAB 8/8/12, effective 1/1/13]



CHAPTER 37  
IOWA PRESCRIPTION MONITORING PROGRAM

**657—37.1(124) Purpose.** These rules establish a prescription monitoring program that compiles a central database of reportable prescriptions dispensed to patients in Iowa. An authorized health care practitioner may, but is not required to, access prescription monitoring program (PMP) information regarding the practitioner's patient to assist in determining appropriate treatment options and to improve the quality of patient care. The PMP is intended to provide a health care practitioner with a resource for information regarding a patient's use of controlled substances. This database will assist the practitioner in identifying any potential diversion, misuse, or abuse of controlled substances without impeding the appropriate medical use of controlled substances.

[ARC 7903B, IAB 7/1/09, effective 8/5/09]

**657—37.2(124) Definitions.** As used in this chapter:

*"Board"* means the Iowa board of pharmacy.

*"Controlled substance"* means a drug, substance, or immediate precursor in Schedules I through V set forth in Iowa Code chapter 124, division II.

*"Council"* means the PMP advisory council established pursuant to Iowa Code section 124.555 to provide oversight and to co-manage PMP activities with the board.

*"Database information"* or *"PMP information"* means information submitted to and maintained by the PMP database.

*"DEA number"* means the registration number issued to an individual or pharmacy by the U.S. Department of Justice, Drug Enforcement Administration authorizing the individual or pharmacy to engage in the prescribing, dispensing, distributing, or procuring of a controlled substance.

*"Dispenser"* means a person who delivers to the ultimate user a substance required to be reported to the PMP database. "Dispenser" includes a pharmacy located outside the state of Iowa that is licensed by the board with a nonresident pharmacy license authorizing the pharmacy to dispense prescription drugs to patients physically located in Iowa. "Dispenser" does not include a person exempt from reporting pursuant to subrule 37.3(1).

*"Health care professional"* means a person who, by education, training, certification, or licensure, is qualified to provide and is engaged in providing health care to patients. "Health care professional" does not include clerical or administrative staff. "Health care professional," other than a licensed prescriber or pharmacist, may include, but is not limited to, a certified pharmacy technician or a technician trainee, a nurse, or a medical assistant or supervised trainee such as a pharmacist-intern or student, a medical student, or a nursing student.

*"National drug code"* or *"NDC number"* means the universal product identifier used in the United States to identify a specific human drug product.

*"Patient"* means the person or animal that is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

*"Patient's agent"* means a person legally authorized to make health care decisions or gain access to health care records on behalf of the patient for purposes of directing the patient's care.

*"Patients rights committee"* or *"committee"* means the physician and pharmacist members of the council responsible for monitoring and ensuring protection and preservation of patients' rights as provided in Iowa Code section 124.555(3) "e."

*"PMP administrator"* means the board staff person or persons designated to manage the PMP under the direction and oversight of the board and the council.

*"Practitioner"* means a prescriber or a pharmacist.

*"Practitioner's agent"* means a health care professional who is employed by or under the direct supervision of a health care practitioner and who is authorized by the practitioner to access PMP information as provided in subrule 37.4(1).

*"Prescriber"* means a licensed health care professional with the authority to prescribe prescription drugs including controlled substances.

“*Prescription monitoring program*” or “*PMP*” means the program established pursuant to these rules for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals, including health care providers, for use in treatment of their patients.

“*Prescription monitoring program database*” or “*PMP database*” means a centralized database of reportable controlled substance prescriptions dispensed to patients and includes data access logs, security tracking information, and records of each individual who requests PMP information.

“*Reportable prescription*” means the record of a Schedule II, III, or IV controlled substance dispensed by a pharmacy to a patient pursuant to a prescriber-authorized prescription. “Reportable prescription” does not include those records excluded in subrule 37.3(1).

“*Schedule II, III, and IV controlled substances*” means those substances that are identified and listed as Schedule II, III, or IV substances in Iowa Code sections 124.205 through 124.210 or in the federal Controlled Substances Act (21 U.S.C. Section 812).

[ARC 7903B, IAB 7/1/09, effective 8/5/09; ARC 0056C, IAB 4/4/12, effective 7/1/12; ARC 0242C, IAB 8/8/12, effective 1/1/13]

**657—37.3(124) Requirements for the PMP.** Each dispenser, unless identified as exempt from reporting pursuant to subrule 37.3(1), shall submit to the PMP administrator a record of each reportable prescription dispensed during a reporting period. A dispenser located outside the state of Iowa, unless identified as exempt from reporting pursuant to subrule 37.3(1), shall submit to the PMP administrator a record of each reportable prescription dispensed during a reporting period to a patient located in Iowa.

**37.3(1) Exemptions.** The dispensing of a controlled substance as described in this subrule shall not be considered a reportable prescription. A dispenser engaged in the distribution of controlled substances solely pursuant to one or more of the practices identified in paragraphs 37.3(1) “a” or 37.3(1) “b” shall so notify the PMP administrator and shall be exempt from reporting to the PMP.

a. A licensed hospital pharmacy shall not be required to report the dispensing of a controlled substance for the purposes of inpatient hospital care, the dispensing of a prescription for a starter supply of a controlled substance at the time of a patient’s discharge from such a facility, or the dispensing of a prescription for a controlled substance in a quantity adequate to treat the patient for a maximum of 72 hours. A hospital pharmacy claiming exemption from reporting pursuant to this paragraph shall certify to the board that the hospital pharmacy dispenses only as provided by this paragraph.

b. A licensed pharmacy shall not be required to report the dispensing of a controlled substance for a patient residing in a long-term care facility or for a patient residing in an inpatient hospice facility. A pharmacy claiming exemption from reporting pursuant to this paragraph shall certify to the board that the pharmacy dispenses only to patients residing in a long-term care facility or to patients residing in an inpatient hospice facility.

c. A prescriber or other authorized person who administers or dispenses a controlled substance, including samples of a controlled substance, for the purposes of outpatient care shall not be required to report such administration or dispensing. This exception shall not apply to a pharmacist who administers a controlled substance, as directed by the prescriber, pursuant to a prescription.

d. A wholesale distributor of a controlled substance shall not be required to report the wholesale distribution of such a substance.

**37.3(2) Data elements.** The information submitted for each prescription shall include, at a minimum, the following items:

- a. Dispenser DEA number.
- b. Date the prescription is filled.
- c. Prescription number.
- d. Indication as to whether the prescription is new or a refill.
- e. NDC number for the drug dispensed.
- f. Quantity of the drug dispensed.
- g. Number of days of drug therapy provided by the drug as dispensed.
- h. Patient name.
- i. Patient address including street address, city, state, and ZIP code.
- j. Patient date of birth.

- k.* Patient gender.
- l.* Prescriber DEA number.
- m.* Date the prescription was issued by the prescriber.
- n.* Method of payment as either third-party payer or patient cash payment.

**37.3(3) Reporting periods.** A record of each reportable prescription dispensed shall be submitted by each dispenser at least weekly. Records may be submitted with greater frequency than required by this subrule. Records of reportable prescriptions dispensed between Sunday and Saturday each week shall be submitted no later than the following Wednesday. However, a pharmacy that is currently submitting prescription dispensing records to another state's PMP on an alternative weekly reporting schedule may request authority to submit records to the Iowa PMP pursuant to that established schedule. The request shall be submitted in writing via e-mail, fax, or regular mail to the PMP administrator. The request shall identify the pharmacy by name, address, and Iowa pharmacy license number and shall define the alternative reporting period. The PMP administrator is hereby authorized to accept the pharmacy's alternative weekly reporting schedule.

**37.3(4) Transmission methods.** Prescription information shall be transmitted using one of the following methods:

*a.* Data upload to a reporting Web site via a secure Internet connection. The PMP administrator will provide dispensers with initial secure login and password information. Dispensers will be required to register on the reporting Web site prior to initial data upload.

*b.* Electronic media including CD-ROM, DVD, or diskette, accompanied by a transmittal form identifying the dispenser submitting the electronic media, the number of prescription records included on the media, and the individual submitting the media.

*c.* If a dispenser does not have an automated record-keeping system capable of producing an electronic report as provided in this rule, the dispenser may submit prescription information on the industry standard universal claim form. The dispenser may complete and submit the claim form on the reporting Web site or, if the dispenser does not have Internet access, the completed paper claim form may be submitted.

*d.* Chain pharmacies and pharmacies under shared ownership may submit combined data transmissions on behalf of all facilities by utilizing the secure FTP procedure.

**37.3(5) Zero reports.** If a dispenser has not been identified as exempt from reporting to the PMP and the dispenser did not dispense any reportable prescriptions during a reporting period, the dispenser shall submit a zero report via the established reporting Web site. If such a dispenser does not have Internet access, the dispenser shall notify the PMP administrator via mail or facsimile transmission that the dispenser did not dispense any reportable prescriptions during the reporting period. The schedule identified in subrule 37.3(3) shall determine timely submission of zero reports.

[ARC 7903B, IAB 7/1/09, effective 8/5/09; ARC 0242C, IAB 8/8/12, effective 1/1/13]

**657—37.4(124) Access to database information.** All information contained in the PMP database, including prescription information submitted for inclusion in the PMP database and records of requests for PMP information, shall be privileged and strictly confidential and not subject to public or open records laws. The board, council, and PMP administrator shall maintain procedures to ensure the privacy and confidentiality of patients, prescribers, dispensers, practitioners, practitioners' agents, and patient information collected, recorded, transmitted, and maintained in the PMP database and to ensure that program information is not disclosed to persons except as provided in this rule.

**37.4(1) Prescribers and pharmacists.** A health care practitioner authorized to prescribe or dispense controlled substances may obtain PMP information regarding the practitioner's patient, or a patient seeking treatment from the practitioner, for the purpose of providing patient health care. A practitioner may authorize no more than three health care professionals to act as the practitioner's agents for the purpose of requesting PMP information regarding a practitioner's patients.

*a.* Prior to being granted access to PMP information, a practitioner or a practitioner's agent shall submit an individual request for registration and program access. A practitioner or a practitioner's agent with Internet access may register via a secure Web site established by the board for that purpose. A

practitioner without Internet access shall submit a written registration request on a form provided by the PMP administrator. A practitioner without Internet access shall not authorize a practitioner's agent to register for or to access PMP information on behalf of the practitioner. The PMP administrator shall take reasonable steps to verify the identity of a practitioner or practitioner's agent and to verify a practitioner's credentials prior to providing a practitioner or practitioner's agent with a secure login and initial password. Each practitioner or practitioner's agent registered to access PMP information shall securely maintain and use the login and password assigned to the individual practitioner or practitioner's agent. Except in an emergency when the patient would be placed in greater jeopardy by restricting PMP information access to the practitioner or practitioner's agent, a registered practitioner shall not share the practitioner's secure login and password information and shall not delegate PMP information access to another health care practitioner or to an unregistered agent. A registered practitioner's agent shall not delegate PMP information access to another individual.

*b.* A practitioner or practitioner's agent with Internet access may submit a request for PMP information via a secure Web site established by the board for that purpose. The requested information shall be provided to the requesting practitioner or practitioner's agent in a format established by the board and shall be delivered via the secure Web site.

*c.* A practitioner without Internet access may submit to the PMP administrator a written request for PMP information via mail or facsimile transmission. The written request shall be in a format established by the board and shall be signed by the requesting practitioner. Prior to processing a written request for PMP information, the PMP administrator shall take reasonable steps to verify the request, which may include but not be limited to a telephone call to the practitioner at a telephone number known to be the number for the practitioner's practice.

*d.* A practitioner or practitioner's agent who requests and receives PMP information consistent with the requirements and intent of these rules may provide that information to another practitioner who is involved in the care of the patient who is the subject of the information. Information from the PMP database remains privileged and strictly confidential. Such disclosures among practitioners shall be consistent with these rules and federal and state laws regarding the confidentiality of patient information. The information shall be used for medical or pharmaceutical care purposes.

**37.4(2) *Regulatory agencies and boards.*** Professional licensing boards and regulatory agencies that supervise or regulate a health care practitioner or that provide payment for health care services shall be able to access information from the PMP database only pursuant to an order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause.

*a.* A director of a licensing board with jurisdiction over a practitioner, or the director's designee, who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

*b.* A director of a regulatory agency with jurisdiction over a practitioner or with jurisdiction over a person receiving health care services pursuant to one or more programs provided by the agency, or the director's designee, who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the director or the director's designee and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

**37.4(3) *Law enforcement agencies.*** Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of any state or federal law relating to controlled substances shall be able to access information from the PMP database by order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. A law enforcement officer shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal

delivery. The request shall be signed by the requesting officer or the officer's superior. The request shall be accompanied by an order, subpoena, or warrant issued by a court or legal authority that requires a determination of probable cause and shall be processed by the PMP administrator. A report identifying PMP information relating to the specific individual identified by the order, subpoena, or warrant may be delivered to the law enforcement officer via mail or alternate secure delivery.

**37.4(4) Patients.** A patient or the patient's agent may request and receive PMP information regarding prescriptions reported to have been dispensed to the patient.

*a.* A patient may submit a signed, written request for records of the patient's prescriptions dispensed during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PMP administrator or authorized staff member at the offices of the board located at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The patient will be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PMP.

*b.* A patient who is unable to personally deliver the request to the board offices may submit a request via mail or commercial delivery service. The request shall comply with all provisions of paragraph "a" above, and the signature of the requesting patient shall be witnessed and the patient's identity shall be attested to by a currently registered notary public. In addition to the notary's signature and assurance of the patient's identity, the notary shall certify a copy of the patient's government-issued photo identification and that certified copy shall be submitted with the written request. The request shall be submitted to the Iowa Board of Pharmacy at the address identified in paragraph "a."

*c.* In the case of a patient whose health care decisions have been legally transferred to the patient's agent, the patient's agent may submit a request on behalf of the patient pursuant to the appropriate procedure in paragraph "a" or "b." In addition to the patient's information, the patient's agent shall be identified by name, current address, and telephone number. In lieu of the patient's signature and identification, the patient's agent shall sign the request and the government-issued photo identification shall identify the patient's agent. The patient's agent shall include a certified copy of the legal document that transferred control over decisions regarding the patient's health care to the patient's agent.

**37.4(5) Court orders and subpoenas.** The PMP administrator shall provide PMP information in response to court orders and county attorney or other subpoenas issued by a court upon a determination of probable cause.

**37.4(6) Statistical data.** The PMP administrator, following review and approval by the patients rights committee, may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes. Prior to the release of any such data, the PMP administrator shall remove any information that could be used to identify an individual patient, prescriber, dispenser, practitioner, or other person who is the subject of the PMP information or data.

**37.4(7) PMP administrator access.** Other than technical, error, and administrative function reports and information needed by PMP support staff to determine that records are received and maintained in good order or to review or resolve issues of reported or suspected erroneous data as provided in rule 657—37.7(124), any other reports concerning the information received from dispensers shall only be prepared at the direction of the board, the council, or the PMP administrator. The board and the council may compile statistical reports from PMP information for use in determining the advisability of continuing the PMP and for use in preparing required reports to the governor and the legislature. The reports shall not include information that would identify any patient, prescriber, dispenser, practitioner, practitioner's agent, or other person who is the subject of the PMP information or data.

[ARC 7903B, IAB 7/1/09, effective 8/5/09; ARC 0056C, IAB 4/4/12, effective 7/1/12]

**657—37.5(124) Fees.** The board may charge a fee and recover costs incurred for the provision of PMP information, including statistical data, except that no fees or costs shall be assessed to a dispenser for reporting to the PMP or to a practitioner for querying the PMP regarding a practitioner's patient. Any fees

or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

[ARC 7903B, IAB 7/1/09, effective 8/5/09]

**657—37.6(124) PMP information retained.** All dispenser records of prescriptions reported to the PMP shall be retained by the PMP for a period of four years following the date of the record. All records of access to or query of PMP information shall be retained by the PMP for a period of four years following the date of the record. At least semiannually, all PMP information identified as exceeding that four-year period shall be deleted from the PMP and discarded in a manner to maintain the confidentiality of the PMP information and data. Statistical data and reports from which all personally identifiable information has been removed or which do not contain personally identifiable information as provided in subrules 37.4(6) and 37.4(7) may be retained by the PMP for historical purposes.

[ARC 7903B, IAB 7/1/09, effective 8/5/09]

**657—37.7(124) Information errors.** Any person who believes that PMP information about that person is false or in error shall submit a written statement to the PMP administrator. The statement shall identify the information the person believes to be false or in error and the reason the individual believes the information to be false or in error. The PMP administrator may examine the information identified in the statement and may request the assistance of the board's compliance staff to determine whether or not the PMP information is accurate. Prior to initiating any action to correct, delete, or amend any PMP information, the PMP administrator shall submit the statement and the resulting report to the patients rights committee for review and approval of the recommended action. If correction, deletion, or amendment of any PMP information is authorized, that action shall be accomplished by the PMP administrator within 72 hours of the committee's decision. The PMP administrator shall respond, in writing, to the person who submitted the statement charging that the PMP information was false or in error. The response shall identify the action approved by the committee.

[ARC 7903B, IAB 7/1/09, effective 8/5/09]

**657—37.8(124) Dispenser and practitioner records.** Nothing in these rules shall apply to records created or maintained in the regular course of business of a pharmacy or health care practitioner. All information, documents, or records otherwise available from pharmacies or health care practitioners shall not be construed as immune from discovery or use in any civil proceedings merely because the information contained in those records was reported to the PMP in accordance with these rules.

[ARC 7903B, IAB 7/1/09, effective 8/5/09]

**657—37.9(124) Prohibited acts.** The PMP administrator shall report to the licensing board of a dispenser, a practitioner, or a practitioner's agent any known violation of the confidentiality provisions or the reporting requirements of the law and these rules for which the dispenser, practitioner, or practitioner's agent is subject to disciplinary action.

**37.9(1) Confidentiality.** A pharmacy, pharmacist, practitioner, or practitioner's agent who knowingly fails to comply with the confidentiality provisions of the law or these rules or who delegates PMP information access to another individual, except as provided in paragraph 37.4(1)"a," is subject to disciplinary action by the appropriate professional licensing board. The PMP administrator or a member of the program staff who knowingly fails to comply with the confidentiality provisions of the law or these rules is subject to disciplinary action by the board. In addition to any disciplinary action or sanctions imposed by a professional licensing board, a pharmacy, pharmacist, practitioner, practitioner's agent, PMP administrator, or member of the PMP program staff who knowingly accesses, uses, or discloses program information in violation of Iowa law or these rules is subject to criminal prosecution as provided in 2011 Iowa Code Supplement section 124.558.

**37.9(2) Dispenser reporting.** A dispenser or a pharmacist who fails to comply with the reporting requirements of the law or these rules may be subject to disciplinary action by the board.

[ARC 7903B, IAB 7/1/09, effective 8/5/09; ARC 0056C, IAB 4/4/12, effective 7/1/12]

These rules are intended to implement Iowa Code sections 124.551, 124.552, and 124.554 to 124.557 and 2011 Iowa Code Supplement sections 124.553 and 124.558.

[Filed ARC 7903B (Notice ARC 7676B, IAB 4/8/09), IAB 7/1/09, effective 8/5/09]  
[Filed ARC 0056C (Notice ARC 9921B, IAB 12/14/11), IAB 4/4/12, effective 7/1/12]  
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## REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

### CHAPTER 1

#### STATE BOARD OF TAX REVIEW—ADMINISTRATION

- 1.1(17A,421) Establishment, membership and location of the state board of tax review
- 1.2(421,17A) Powers and duties of the state board
- 1.3(421,17A) Powers and duties not subject to the jurisdiction of the state board

### CHAPTER 2

#### STATE BOARD OF TAX REVIEW—CONDUCT OF APPEALS AND RULES OF PRACTICE AND PROCEDURE

##### DIVISION I APPELLATE CASES

##### GENERAL RULES OF PRACTICE AND PROCEDURE FOR FINAL CONTESTED CASE DECISIONS OF OR ATTRIBUTABLE TO THE DIRECTOR OF REVENUE

- 2.1(421,17A) Definitions
- 2.2(421,17A) Appeal and jurisdiction
- 2.3(421,17A) Form of appeal
- 2.4(421,17A) Certification by director
- 2.5(421,17A) Motions
- 2.6(421,17A) Answer
- 2.7(421,17A) Docketing
- 2.8(421,17A) Filing of papers
- 2.9(421,17A) Hearing an appeal
- 2.10(17A,421) Appearances by appellant
- 2.11(421,17A) Authority of state board to issue procedural orders
- 2.12(421,17A) Continuances
- 2.13(17A,421) Place of hearing
- 2.14(17A,421) Members participating
- 2.15(17A,421) Presiding officer
- 2.16(17A,421) Appeals of state board decisions

##### DIVISION II ORIGINAL JURISDICTION

##### RULES GOVERNING CONTESTED CASE PROCEEDINGS IN WHICH THE STATE BOARD HAS ORIGINAL JURISDICTION TO COMMENCE A CONTESTED CASE PROCEEDING

- 2.17(421,17A) Applicability and scope
- 2.18(17A) Definitions
- 2.19(421,17A) Time requirements
- 2.20(421,17A) Notice of appeal
- 2.21(421,17A) Form of appeal
- 2.22(421,17A) Certification by director
- 2.23(421,17A) Answer
- 2.24(421,17A) Docketing
- 2.25(421,17A) Appearances by appellant
- 2.26(421,17A) Place of hearing
- 2.27(421,17A) Transcript of hearing
- 2.28(421,17A) Requests for contested case proceeding
- 2.29(421,17A) Notice of hearing
- 2.30(17A) Presiding officer

2.31(421,17A)	Transfer of case for hearing or appeal
2.32(421,17A)	Waiver of procedures
2.33(421,17A)	Telephone proceedings
2.34(17A,421)	Disqualifications of a presiding officer
2.35(421,17A)	Consolidation and severance
2.36(17A)	Service and filing of pleadings and other papers
2.37(421,17A)	Discovery
2.38(421,17A)	Subpoenas
2.39(421,17A)	Motions
2.40(421,17A)	Prehearing conference
2.41(421,17A)	Continuances
2.42(17A)	Withdrawals
2.43(421,17A)	Intervention
2.44(421,17A)	Hearing procedures
2.45(421,17A)	Evidence
2.46(421,17A)	Default or dismissal
2.47(421,17A)	Ex parte communication
2.48(421,17A)	Recording costs
2.49(421,17A)	Interlocutory appeals
2.50(421,17A)	Final decision
2.51(421,17A)	Applications for rehearing
2.52(421,17A)	Stays of agency and board actions
2.53(421,17A)	No factual dispute contested case
2.54(421,17A)	Appeal and review of a state board decision

## CHAPTER 3

## VOLUNTARY DISCLOSURE PROGRAM

3.1(421,422,423)	Voluntary disclosure program
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## CHAPTER 4

## MULTILEVEL MARKETER AGREEMENTS

4.1(421)	Multilevel marketers—in general
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## CHAPTER 5

## PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

5.1(17A,22)	Definitions
5.3(17A,22)	Requests for access to records
5.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
5.9(17A,22)	Disclosures without the consent of the subject
5.10(17A,22)	Routine use
5.11(17A,22)	Consensual disclosure of confidential records
5.12(17A,22)	Release to subject
5.13(17A,22)	Availability of records
5.14(17A,22)	Personally identifiable information
5.15(17A,22)	Other groups of records
5.16(17A,22)	Applicability

TITLE I  
ADMINISTRATIONCHAPTER 6  
ORGANIZATION, PUBLIC INSPECTION

- 6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests
- 6.2(17A) Public inspection
- 6.3(17A) Examination of records
- 6.4(17A) Copies of proposed rules
- 6.5(17A) Regulatory analysis procedures
- 6.6(422) Retention of records and returns by the department
- 6.7(68B) Consent to sell
- 6.8(421) Tax return extension in disaster areas

CHAPTER 7  
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE

- 7.1(421,17A) Applicability and scope of rules
- 7.2(421,17A) Definitions
- 7.3(17A) Business hours
- 7.4(17A) Computation of time, filing of documents
- 7.5(17A) Form and style of papers
- 7.6(17A) Persons authorized to represent themselves or others
- 7.7(17A) Resolution of tax liability
- 7.8(17A) Protest
- 7.9(17A) Identifying details
- 7.10(17A) Docket
- 7.11(17A) Informal procedures and dismissals of protests
- 7.12(17A) Answer
- 7.13(17A) Subpoenas
- 7.14(17A) Commencement of contested case proceedings
- 7.15(17A) Discovery
- 7.16(17A) Prehearing conference
- 7.17(17A) Contested case proceedings
- 7.18(17A) Interventions
- 7.19(17A) Record and transcript
- 7.20(17A) Application for rehearing
- 7.21(17A) Service
- 7.22(17A) Ex parte communications and disqualification
- 7.23(17A) Licenses
- 7.24(17A) Declaratory order—in general
- 7.25(17A) Department procedure for rule making
- 7.26(17A) Public inquiries on rule making and the rule-making records
- 7.27(17A) Criticism of rules
- 7.28(17A) Waiver or variance of certain department rules
- 7.29(17A) Petition for rule making
- 7.30(9C,91C) Procedure for nonlocal business entity bond forfeitures
- 7.31(421) Abatement of unpaid tax
- 7.32(421) Time and place of taxpayer interviews
- 7.33(421) Mailing to the last-known address

- 7.34(421) Power of attorney  
 7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied

CHAPTER 8  
 FORMS AND COMMUNICATIONS

- 8.1(17A) Definitions  
 8.2(17A) Official forms  
 8.3(17A) Substitution of official forms  
 8.4(17A) Description of forms  
 8.5(422) Electronic filing of Iowa income tax returns

CHAPTER 9  
 FILING AND EXTENSION OF TAX LIENS  
 AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

- 9.1(422,423) Definitions  
 9.2(422,423) Lien attaches  
 9.3(422,423) Purpose of filing  
 9.4(422,423) Place of filing  
 9.5(422,423) Time of filing  
 9.6(422,423) Period of lien  
 9.7(422,423) Fees

CHAPTER 10  
 INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

- 10.1(421) Definitions  
 10.2(421) Interest  
 10.3(422,423,450,452A) Interest on refunds and unpaid tax  
 10.4(421) Frivolous return penalty  
 10.5(421) Improper receipt of credit or refund  
 10.6(421) Penalties  
 10.7(421) Waiver of penalty—definitions  
 10.8(421) Penalty exceptions  
 10.9(421) Notice of penalty exception for one late return in a three-year period  
 10.10 to 10.19 Reserved

RETAIL SALES

- 10.20 to 10.29 Reserved

USE

- 10.30 to 10.39 Reserved

INDIVIDUAL INCOME

- 10.40 to 10.49 Reserved

WITHHOLDING

- 10.50 to 10.55 Reserved

CORPORATE

- 10.56 to 10.65 Reserved

FINANCIAL INSTITUTIONS

- 10.66 to 10.70 Reserved

## MOTOR FUEL

10.71(452A) Penalty and enforcement provisions  
 10.72(452A) Interest  
 10.73 to 10.75 Reserved

## CIGARETTES AND TOBACCO

10.76(453A) Penalties  
 10.77(453A) Interest  
 10.78 Reserved  
 10.79(453A) Request for statutory exception to penalty  
 10.80 to 10.84 Reserved

## INHERITANCE

10.85 to 10.89 Reserved

## IOWA ESTATE

10.90 to 10.95 Reserved

## GENERATION SKIPPING

10.96 to 10.100 Reserved

## FIDUCIARY INCOME

10.101 to 10.109 Reserved

## HOTEL AND MOTEL

10.110 to 10.114 Reserved

## ALL TAXES

10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer

## JEOPARDY ASSESSMENTS

10.116(422,453B) Jeopardy assessments  
 10.117(422,453B) Procedure for posting bond  
 10.118(422,453B) Time limits  
 10.119(422,453B) Amount of bond  
 10.120(422,453B) Posting of bond  
 10.121(422,453B) Order  
 10.122(422,453B) Director's order  
 10.123(422,453B) Type of bond  
 10.124(422,453B) Form of surety bond  
 10.125(422,453B) Duration of the bond  
 10.126(422,453B) Exoneration of the bond

TITLE II  
EXCISECHAPTER 11  
ADMINISTRATION

11.1(422,423) Definitions  
 11.2(422,423) Statute of limitations  
 11.3(422,423) Credentials and receipts  
 11.4(422,423) Retailers required to keep records  
 11.5(422,423) Audit of records  
 11.6(422,423) Billings  
 11.7(422,423) Collections  
 11.8(422,423) No property exempt from distress and sale

- 11.9(422,423) Information confidential
- 11.10(423) Bonding procedure

## CHAPTER 12

## FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

- 12.1(422) Returns and payment of tax
- 12.2(422,423) Remittances
- 12.3(422) Permits and negotiated rate agreements
- 12.4(422) Nonpermit holders
- 12.5(422,423) Regular permit holders responsible for collection of tax
- 12.6(422,423) Sale of business
- 12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors
- 12.8(422) Vending machines and other coin-operated devices
- 12.9(422) Claim for refund of tax
- 12.10(423) Audit limitation for certain services
- 12.11 Reserved
- 12.12(422) Extension of time for filing
- 12.13(422) Determination of filing status
- 12.14(422,423) Immediate successor liability for unpaid tax
- 12.15(422,423) Officers and partners—personal liability for unpaid tax
- 12.16(422) Show sponsor liability
- 12.17(422) Purchaser liability for unpaid sales tax
- 12.18(423) Biodiesel production refund

## CHAPTER 13

## PERMITS

- 13.1(422) Retail sales tax permit required
- 13.2(422) Application for permit
- 13.3(422) Permit not transferable—sale of business
- 13.4(422) Permit—consolidated return optional
- 13.5(422) Retailers operating a temporary business
- 13.6(422) Reinstatement of canceled permit
- 13.7(422) Reinstatement of revoked permit
- 13.8(422) Withdrawal of permit
- 13.9(422) Loss or destruction of permit
- 13.10(422) Change of location
- 13.11(422) Change of ownership
- 13.12(422) Permit posting
- 13.13(422) Trustees, receivers, executors and administrators
- 13.14(422) Vending machines and other coin-operated devices
- 13.15(422) Other amusements
- 13.16(422) Substantially delinquent tax—denial of permit
- 13.17(422) Substantially delinquent tax—revocation of permit

## CHAPTER 14

## COMPUTATION OF TAX

- 14.1(422) Tax not to be included in price
- 14.2(422,423,77GA,ch1130) Retail bracket system for state sales and local option sales and service tax
- 14.3(422,423) Taxation of transactions due to rate change

## CHAPTER 15

## DETERMINATION OF A SALE AND SALE PRICE

15.1(422)	Conditional sales to be included in gross sales
15.2(422,423)	Repossessed goods
15.3(422,423)	Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers
15.4(422,423)	Bad debts
15.5(422,423)	Recovery of bad debts by collection agency or attorney
15.6(422,423)	Discounts, rebates and coupons
15.7	Reserved
15.8(422,423)	Returned merchandise
15.9(422)	Goods damaged in transit
15.10(422)	Consignment sales
15.11(422,423)	Leased departments
15.12(422,423)	Excise tax included in and excluded from gross receipts
15.13(422,423)	Freight, other transportation charges, and exclusions from the exemption applicable to these services
15.14(422,423)	Installation charges when tangible personal property is sold at retail
15.15(422)	Premiums and gifts
15.16(422)	Gift certificates
15.17(422,423)	Finance charge
15.18(422,423)	Coins and other currency exchanged at greater than face value
15.19(422,423)	Trade-ins
15.20(422,423)	Corporate mergers which do not involve taxable sales of tangible personal property or services

## CHAPTER 16

## TAXABLE SALES

16.1(422)	Tax imposed
16.2(422)	Used or secondhand tangible personal property
16.3(422,423)	Tangible personal property used or consumed by the manufacturer thereof
16.4(422,423)	Patterns, dies, jigs, tools, and manufacturing or printing aids
16.5(422,423)	Explosives used in mines, quarries and elsewhere
16.6(422,423)	Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts
16.7	Reserved
16.8(422,423)	Wholesalers and jobbers selling at retail
16.9(422,423)	Materials and supplies sold to retail stores
16.10(422,423)	Sales to certain corporations organized under federal statutes
16.11(422,423)	Paper plates, paper cups, paper dishes, paper napkins, paper, wooden or plastic spoons and forks and straws
16.12(422)	Tangible personal property purchased for resale but incidentally consumed by the purchaser
16.13(422)	Property furnished without charge by employers to employees
16.14(422)	Sales in interstate commerce—goods delivered into this state
16.15(422)	Owners or operators of buildings
16.16(422,423)	Tangible personal property made to order
16.17(422,423)	Blacksmith and machine shops
16.18(422,423)	Sales of signs at retail
16.19(422,423)	Products sold by cooperatives to members or patrons
16.20(422,423)	Municipal utilities, investor-owned utilities, or municipal or rural electrification cooperatives or associations

16.21(422,423)	Sale of pets
16.22(422,423)	Sales on layaway
16.23(422)	Meal tickets, coupon books, and merchandise cards
16.24(422,423)	Truckers engaged in retail business
16.25(422,423)	Foreign truckers selling at retail in Iowa
16.26(422)	Admissions to amusements, athletic events, commercial amusement enterprises, fairs, and games
16.27 and 16.28	Reserved
16.29(422)	Rental of personal property in connection with the operation of amusements
16.30(422)	Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee
16.31	Reserved
16.32(422)	River steamboats
16.33(422)	Pawnbrokers
16.34(422,423)	Druggists and pharmacists
16.35(422,423)	Memorial stones
16.36(422)	Communication services furnished by hotel to its guests
16.37(422)	Private clubs
16.38	Reserved
16.39(422)	Athletic events
16.40(422,423)	Iowa dental laboratories
16.41(422,423)	Dental supply houses
16.42(422)	News distributors and magazine distributors
16.43(422,423)	Magazine subscriptions by independent dealers
16.44(422,423)	Sales by finance companies
16.45(422,423)	Sale of baling wire and baling twine
16.46(422,423)	Snowmobiles and motorboats
16.47(422)	Conditional sales contracts
16.48(422,423)	Carpeting and other floor coverings
16.49(422,423)	Bowling
16.50(422,423)	Various special problems relating to public utilities
16.51(422,423)	Sales of services treated as sales of tangible personal property
16.52(422,423)	Sales of prepaid merchandise cards

## CHAPTER 17

## EXEMPT SALES

17.1(422,423)	Gross receipts expended for educational, religious, and charitable purposes
17.2(422)	Fuel used in processing—when exempt
17.3(422,423)	Processing exemptions
17.4(422,423)	Commercial fertilizer and agricultural limestone
17.5(422,423)	Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O
17.6(422,423)	Sales of vehicles subject to registration—new and used—by dealers
17.7(422,423)	Sales to certain federal corporations
17.8(422)	Sales in interstate commerce—goods transported or shipped from this state
17.9(422,423)	Sales of breeding livestock, fowl and certain other property used in agricultural production
17.10(422,423)	Materials used for seed inoculations
17.11(422,423)	Educational institution
17.12(422)	Coat or hat checkrooms
17.13(422,423)	Railroad rolling stock
17.14(422,423)	Chemicals, solvents, sorbents, or reagents used in processing

17.15(422,423)	Demurrage charges
17.16(422,423)	Sale of a draft horse
17.17(422,423)	Beverage container deposits
17.18(422,423)	Films, video tapes and other media, exempt rental and sale
17.19(422,423)	Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax
17.20(422)	Raffles
17.21(422)	Exempt sales of prizes
17.22(422,423)	Modular homes
17.23(422,423)	Sales to other states and their political subdivisions
17.24(422)	Nonprofit private museums
17.25(422,423)	Exempt sales by excursion boat licensees
17.26(422,423)	Bedding for agricultural livestock or fowl
17.27(422,423)	Statewide notification center service exemption
17.28(422,423)	State fair and fair societies
17.29(422,423)	Reciprocal shipment of wines
17.30(422,423)	Nonprofit organ procurement organizations
17.31(422,423)	Sale of electricity to water companies
17.32(422)	Food and beverages sold by certain organizations are exempt
17.33(422,423)	Sales of building materials, supplies and equipment to not-for-profit rural water districts
17.34(422,423)	Sales to hospices
17.35(422,423)	Sales of livestock ear tags
17.36(422,423)	Sale or rental of information services
17.37(422,423)	Temporary exemption from sales tax on certain utilities
17.38(422,423)	State sales tax phase-out on energies
17.39(422,423)	Art centers
17.40(422,423)	Community action agencies
17.41(422,423)	Legislative service bureau

## CHAPTER 18

TAXABLE AND EXEMPT SALES DETERMINED BY METHOD  
OF TRANSACTION OR USAGE

18.1(422,423)	Tangible personal property purchased from the United States government
18.2(422,423)	Sales of butane, propane and other like gases in cylinder drums, etc.
18.3(422,423)	Chemical compounds used to treat water
18.4(422)	Mortgages and trustees
18.5(422,423)	Sales to agencies or instrumentalities of federal, state, county and municipal government
18.6(422,423)	Relief agencies
18.7(422,423)	Containers, including packing cases, shipping cases, wrapping material and similar items
18.8(422)	Auctioneers
18.9(422)	Sales by farmers
18.10(422,423)	Florists
18.11(422,423)	Landscaping materials
18.12(422,423)	Hatcheries
18.13(422,423)	Sales by the state of Iowa, its agencies and instrumentalities
18.14(422,423)	Sales of livestock and poultry feeds
18.15(422,423)	Student fraternities and sororities
18.16(422,423)	Photographers and photostaters

18.17(422,423)	Gravel and stone
18.18(422,423)	Sale of ice
18.19(422,423)	Antiques, curios, old coins or collector's postage stamps
18.20(422,423)	Communication services
18.21(422,423)	Morticians or funeral directors
18.22(422,423)	Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians
18.23(422)	Veterinarians
18.24(422,423)	Hospitals, infirmaries and sanitariums
18.25(422,423)	Warranties and maintenance contracts
18.26(422)	Service charge and gratuity
18.27(422)	Advertising agencies, commercial artists, and designers
18.28(422,423)	Casual sales
18.29(422,423)	Processing, a definition of the word, its beginning and completion characterized with specific examples of processing
18.30(422)	Taxation of American Indians
18.31(422,423)	Tangible personal property purchased by one who is engaged in the performance of a service
18.32(422,423)	Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations
18.33(422,423)	Printers' and publishers' supplies exemption with retroactive effective date
18.34(422,423)	Automatic data processing
18.35(422,423)	Drainage tile
18.36(422,423)	True leases and purchases of tangible personal property by lessors
18.37(422,423)	Motor fuel, special fuel, aviation fuels and gasoline
18.38(422,423)	Urban transit systems
18.39(422,423)	Sales or services rendered, furnished, or performed by a county or city
18.40(422,423)	Renting of rooms
18.41(422,423)	Envelopes for advertising
18.42(422,423)	Newspapers, free newspapers and shoppers' guides
18.43(422,423)	Written contract
18.44(422,423)	Sale or rental of farm machinery and equipment
18.45(422,423)	Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997
18.46(422,423)	Automotive fluids
18.47(422,423)	Maintenance or repair of fabric or clothing
18.48(422,423)	Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production
18.49(422,423)	Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999
18.50(422,423)	Property used by a lending organization
18.51(422,423)	Sales to nonprofit legal aid organizations
18.52(422,423)	Irrigation equipment used in farming operations
18.53(422,423)	Sales to persons engaged in the consumer rental purchase business
18.54(422,423)	Sales of advertising material
18.55(422,423)	Drop shipment sales
18.56(422,423)	Wind energy conversion property
18.57(422,423)	Exemptions applicable to the production of flowering, ornamental, and vegetable plants
18.58(422,423)	Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997
18.59(422,423)	Exempt sales to nonprofit hospitals

- 18.60(422,423) Exempt sales of gases used in the manufacturing process  
 18.61(422,423) Exclusion from tax for property delivered by certain media

## CHAPTER 19

## SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

- 19.1(422,423) General information  
 19.2(422,423) Contractors are consumers of building materials, supplies, and equipment by statute  
 19.3(422,423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners  
 19.4(422,423) Contractors, subcontractors or builders who are retailers  
 19.5(422,423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa  
 19.6(422,423) Prefabricated structures  
 19.7(422,423) Types of construction contracts  
 19.8(422,423) Machinery and equipment sales contracts with installation  
 19.9(422,423) Construction contracts with equipment sales (mixed contracts)  
 19.10(422,423) Distinguishing machinery and equipment from real property  
 19.11(422,423) Tangible personal property which becomes structures  
 19.12(422,423) Construction contracts with tax exempt entities  
 19.13(422,423) Tax on enumerated services  
 19.14(422,423) Transportation cost  
 19.15(422,423) Start-up charges  
 19.16(422,423) Liability of subcontractors  
 19.17(422,423) Liability of sponsors  
 19.18(422,423) Withholding  
 19.19(422,423) Resale certificates  
 19.20(423) Reporting for use tax

## CHAPTER 20

## FOODS FOR HUMAN CONSUMPTION, PRESCRIPTION DRUGS, INSULIN, HYPODERMIC SYRINGES, DIABETIC TESTING MATERIALS, PROSTHETIC, ORTHOTIC OR ORTHOPEDIC DEVICES

- 20.1(422,423) Foods for human consumption  
 20.2(422,423) Food coupon rules  
 20.3(422,423) Nonparticipating retailer in the food coupon program  
 20.4(422,423) Determination of eligible foods  
 20.5(422,423) Meals and prepared food  
 20.6(422,423) Vending machines  
 20.7(422,423) Prescription drugs and devices  
 20.8(422,423) Exempt sales of nonprescription medical devices, other than prosthetic devices  
 20.9(422,423) Prosthetic, orthotic and orthopedic devices  
 20.10(422,423) Sales and rentals covered by Medicaid and Medicare  
 20.11(422,423) Reporting  
 20.12(422,423) Exempt sales of clothing and footwear during two-day period in August

## CHAPTERS 21 to 25

Reserved

TITLE III  
SALES TAX ON SERVICESCHAPTER 26  
SALES AND USE TAX ON SERVICES

26.1(422)	Definition and scope
26.2(422)	Enumerated services exempt
26.3(422)	Alteration and garment repair
26.4(422)	Armored car
26.5(422)	Vehicle repair
26.6(422)	Battery, tire and allied
26.7(422)	Investment counseling
26.8(422)	Bank and financial institution service charges
26.9(422)	Barber and beauty
26.10(422)	Boat repair
26.11(422)	Car and vehicle wash and wax
26.12(422)	Carpentry
26.13(422)	Roof, shingle and glass repair
26.14(422)	Dance schools and dance studios
26.15(422)	Dry cleaning, pressing, dyeing and laundering
26.16(422)	Electrical and electronic repair and installation
26.17(422)	Engraving, photography and retouching
26.18(422,423)	Equipment and tangible personal property rental
26.19(422)	Excavating and grading
26.20(422)	Farm implement repair of all kinds
26.21(422)	Flying service
26.22(422)	Furniture, rug, upholstery, repair and cleaning
26.23(422)	Fur storage and repair
26.24(422)	Golf and country clubs and all commercial recreation
26.25(422)	House and building moving
26.26(422)	Household appliance, television and radio repair
26.27(422)	Jewelry and watch repair
26.28(422)	Machine operators
26.29(422)	Machine repair of all kinds
26.30(422)	Motor repair
26.31(422)	Motorcycle, scooter and bicycle repair
26.32(422)	Oilers and lubricators
26.33(422)	Office and business machine repair
26.34(422)	Painting, papering and interior decorating
26.35(422)	Parking facilities
26.36(422)	Pipe fitting and plumbing
26.37(422)	Wood preparation
26.38(422)	Private employment agency, executive search agency
26.39(422)	Printing and binding
26.40(422)	Sewing and stitching
26.41(422)	Shoe repair and shoeshine
26.42(422)	Storage warehousing, storage locker, and storage warehousing of raw agricultural products and household goods
26.43(422,423)	Telephone answering service
26.44(422)	Test laboratories
26.45(422)	Termite, bug, roach, and pest eradicators
26.46(422)	Tin and sheet metal repair

26.47(422)	Turkish baths, massage, and reducing salons
26.48(422)	Vulcanizing, recapping or retreading
26.49	Reserved
26.50(422)	Weighing
26.51(422)	Welding
26.52(422)	Well drilling
26.53(422)	Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables
26.54(422)	Wrecking service
26.55(422)	Wrecker and towing
26.56(422)	Cable and pay television
26.57(422)	Camera repair
26.58(422)	Campgrounds
26.59(422)	Gun repair
26.60(422)	Janitorial and building maintenance or cleaning
26.61(422)	Lawn care
26.62(422)	Landscaping
26.63(422)	Pet grooming
26.64(422)	Reflexology
26.65(422)	Tanning beds and tanning salons
26.66(422)	Tree trimming and removal
26.67(422)	Water conditioning and softening
26.68(422)	Motor vehicle, recreational vehicle and recreational boat rental
26.69(422)	Security and detective services
26.70	Reserved
26.71(422,423)	Solid waste collection and disposal services
26.72(422,423)	Sewage services
26.73	Reserved
26.74(422,423)	Aircraft rental
26.75(422,423)	Sign construction and installation
26.76(422,423)	Swimming pool cleaning and maintenance
26.77(422,423)	Taxidermy
26.78(422,423)	Mini-storage
26.79(422,423)	Dating services
26.80(422,423)	Limousine service
26.81(422)	Sales of bundled services contracts

## CHAPTER 27

## AUTOMOBILE RENTAL EXCISE TAX

27.1(422,422C,423)	Definitions and characterizations
27.2(422,422C,423)	Tax imposed upon rental of automobiles
27.3(422,422C,423)	Lessor's obligation to collect tax
27.4(422,422C,423)	Administration of tax

TITLE IV  
USECHAPTER 28  
DEFINITIONS

28.1(423)	Taxable use defined
28.2(423)	Processing of property defined
28.3(423)	Purchase price defined
28.4(423)	Retailer maintaining a place of business in this state defined

CHAPTER 29  
CERTIFICATES

- 29.1(423) Certificate of registration
- 29.2(423) Cancellation of certificate of registration
- 29.3(423) Certificates of resale, direct pay permits, or processing

CHAPTER 30  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

- 30.1(423) Liability for use tax and denial and revocation of permit
- 30.2(423) Measure of use tax
- 30.3(421,423) Consumer's use tax return
- 30.4(423) Retailer's use tax return
- 30.5(423) Collection requirements of registered retailers
- 30.6(423) Bracket system to be used by registered vendors
- 30.7(423) Sales tax or use tax paid to another state
- 30.8(423) Registered retailers selling tangible personal property on a conditional sale contract basis
- 30.9(423) Registered vendors repossessing goods sold on a conditional sale contract basis
- 30.10(423) Penalties for late filing of a monthly tax deposit or use tax returns
- 30.11(423) Claim for refund of use tax
- 30.12(423) Extension of time for filing

CHAPTER 31  
RECEIPTS SUBJECT TO USE TAX

- 31.1(423) Transactions consummated outside this state
- 31.2(423) Goods coming into this state
- 31.3(423) Sales by federal government or agencies to consumers
- 31.4(423) Sales for lease of vehicles subject to registration—taxation and exemptions
- 31.5(423) Motor vehicle use tax on long-term leases
- 31.6(423) Sales of aircraft subject to registration
- 31.7(423) Communication services

CHAPTER 32  
RECEIPTS EXEMPT FROM USE TAX

- 32.1(423) Tangible personal property and taxable services subject to sales tax
- 32.2(423) Sales tax exemptions applicable to use tax
- 32.3(423) Mobile homes and manufactured housing
- 32.4(423) Exemption for vehicles used in interstate commerce
- 32.5(423) Exemption for transactions if sales tax paid
- 32.6(423) Exemption for ships, barges, and other waterborne vessels
- 32.7(423) Exemption for containers
- 32.8(423) Exemption for building materials used outside this state
- 32.9(423) Exemption for vehicles subject to registration
- 32.10(423) Exemption for vehicles operated under Iowa Code chapter 326
- 32.11(423) Exemption for vehicles purchased for rental or lease
- 32.12(423) Exemption for vehicles previously purchased for rental
- 32.13(423) Exempt use of aircraft on and after July 1, 1999

CHAPTER 33  
RECEIPTS SUBJECT TO USE TAX DEPENDING ON  
METHOD OF TRANSACTION

- 33.1 Reserved
- 33.2(423) Federal manufacturer's or retailer's excise tax

- 33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current
- 33.4(423) Repair of tangible personal property outside the state of Iowa
- 33.5(423) Taxation of American Indians
- 33.6(422,423) Exemption for property used in Iowa only in interstate commerce
- 33.7(423) Property used to manufacture certain vehicles to be leased
- 33.8(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa
- 33.9(423) Sales of mobile homes, manufactured housing, and related property and services
- 33.10(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate

#### CHAPTER 34

##### VEHICLES SUBJECT TO REGISTRATION

- 34.1(422,423) Definitions
- 34.2(423) County treasurer shall collect tax
- 34.3(423) Returned vehicles and tax refunded by manufacturers
- 34.4(423) Use tax collections required
- 34.5(423) Exemptions
- 34.6(423) Vehicles subject to registration received as gifts or prizes
- 34.7(423) Titling of used foreign vehicles by dealers
- 34.8(423) Dealer's retail sales tax returns
- 34.9(423) Affidavit forms
- 34.10(423) Exempt and taxable purchases of vehicles for taxable rental
- 34.11(423) Manufacturer's refund of use tax to a consumer, lessor, or lessee of a defective motor vehicle
- 34.12(423) Government payments for a motor vehicle which do not involve government purchases of the same
- 34.13(423) Transfers of vehicles resulting from corporate mergers and other types of corporate transfers
- 34.14(423) Refund of use tax paid on the purchase of a motor vehicle
- 34.15(423) Registration by manufacturers
- 34.16(423) Rebates
- 34.17(321,423) Repossession of a vehicle
- 34.18(423) Federal excise tax
- 34.19(423) Claiming an exemption from Iowa tax
- 34.20(423) Affidavit forms
- 34.21(423) Insurance companies

#### CHAPTERS 35 and 36

Reserved

#### CHAPTER 37

##### UNDERGROUND STORAGE TANK RULES

##### INCORPORATED BY REFERENCE

- 37.1(424) Rules incorporated

TITLE V  
*INDIVIDUAL*

#### CHAPTER 38

##### ADMINISTRATION

- 38.1(422) Definitions
- 38.2(422) Statute of limitations
- 38.3(422) Retention of records

38.4(422)	Authority for deductions
38.5(422)	Jeopardy assessments
38.6(422)	Information deemed confidential
38.7(422)	Power of attorney
38.8(422)	Delegations to audit and examine
38.9(422)	Bonding procedure
38.10(422)	Indexation
38.11(422)	Appeals of notices of assessment and notices of denial of taxpayer's refund claims
38.12(422)	Indexation of the optional standard deduction for inflation
38.13(422)	Reciprocal tax agreements
38.14(422)	Information returns for reporting income payments to the department of revenue
38.15(422)	Relief of innocent spouse for substantial understatement of tax attributable to other spouse
38.16(422)	Preparation of taxpayers' returns by department employees
38.17(422)	Resident determination
38.18(422)	Tax treatment of income repaid in current tax year which had been reported on prior Iowa individual income tax return
38.19(422)	Indication of dependent child health care coverage on tax return

#### CHAPTER 39

##### FILING RETURN AND PAYMENT OF TAX

39.1(422)	Who must file
39.2(422)	Time and place for filing
39.3(422)	Form for filing
39.4(422)	Filing status
39.5(422)	Payment of tax
39.6(422)	Minimum tax
39.7(422)	Tax on lump-sum distributions
39.8(422)	State income tax limited to taxpayer's net worth immediately before the distressed sale
39.9(422)	Special tax computation for all low-income taxpayers except single taxpayers
39.10(422)	Election to report excess income from sale or exchange of livestock due to drought in the next tax year
39.11(422)	Forgiveness of tax for an individual whose federal income tax was forgiven because the individual was killed outside the United States due to military or terroristic action
39.12(422)	Tax benefits for persons in the armed forces deployed outside the United States
39.13	Reserved
39.14(422)	Tax benefits for persons serving in support of the Bosnia-Herzegovina hazardous duty area
39.15(422)	Special tax computation for taxpayers who are 65 years of age or older

#### CHAPTER 40

##### DETERMINATION OF NET INCOME

40.1(422)	Net income defined
40.2(422)	Interest and dividends from federal securities
40.3(422)	Interest and dividends from foreign securities, and securities of state and their political subdivisions
40.4	Reserved
40.5(422)	Military pay
40.6(422)	Interest and dividend income
40.7(422)	Current year capital gains and losses

40.8(422)	Gains and losses on property acquired before January 1, 1934
40.9(422)	Work opportunity tax credit and alcohol fuel credit
40.10 and 40.11	Reserved
40.12(422)	Income from partnerships or limited liability companies
40.13(422)	Subchapter "S" income
40.14(422)	Contract sales
40.15(422)	Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes
40.16(422)	Income of nonresidents
40.17(422)	Income of part-year residents
40.18(422)	Net operating loss carrybacks and carryovers
40.19(422)	Casualty losses
40.20(422)	Adjustments to prior years
40.21(422)	Additional deduction for wages paid or accrued for work done in Iowa by certain individuals
40.22(422)	Disability income exclusion
40.23(422)	Social security benefits
40.24(99E)	Lottery prizes
40.25 and 40.26	Reserved
40.27(422)	Incomes from distressed sales of qualifying taxpayers
40.28	Reserved
40.29(422)	Intangible drilling costs
40.30(422)	Percentage depletion
40.31(422)	Away-from-home expenses of state legislators
40.32(422)	Interest and dividends from regulated investment companies which are exempt from federal income tax
40.33	Reserved
40.34(422)	Exemption of restitution payments for persons of Japanese ancestry
40.35(422)	Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans
40.36(422)	Exemption of interest earned on bonds issued to finance beginning farmer loan program
40.37(422)	Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board
40.38(422)	Capital gain deduction or exclusion for certain types of net capital gains
40.39(422)	Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system
40.40(422)	Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield
40.41	Reserved
40.42(422)	Depreciation of speculative shell buildings
40.43(422)	Retroactive exemption for payments received for providing unskilled in-home health care services to a relative
40.44(422,541A)	Individual development accounts
40.45(422)	Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa
40.46(422)	Taxation of compensation of nonresident members of professional athletic teams
40.47(422)	Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors
40.48(422)	Health insurance premiums deduction
40.49(422)	Employer social security credit for tips
40.50(422)	Computing state taxable amounts of pension benefits from state pension plans

- 40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area
- 40.52(422) Mutual funds
- 40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted
- 40.54(422) Roth individual retirement accounts
- 40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims
- 40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions
- 40.57(422) Installment sales by taxpayers using the accrual method of accounting
- 40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States
- 40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate
- 40.60(422) Additional first-year depreciation allowance
- 40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn
- 40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve
- 40.63(422) Exclusion of income from military student loan repayments
- 40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty
- 40.65(422) Section 179 expensing
- 40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant
- 40.67(422) Deduction for alternative motor vehicles
- 40.68(422) Injured veterans grant program
- 40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain
- 40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects
- 40.71(422) Exclusion for certain victim compensation payments
- 40.72(422) Exclusion of Vietnam Conflict veterans bonus
- 40.73(422) Exclusion for health care benefits of nonqualified tax dependents
- 40.74(422) Exclusion for AmeriCorps Segal Education Award
- 40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund
- 40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard
- 40.77(422) Exclusion of biodiesel production refund
- 40.78(422) Allowance of certain deductions for 2008 tax year
- 40.79(422) Special filing provisions related to 2010 tax changes

## CHAPTER 41

## DETERMINATION OF TAXABLE INCOME

- 41.1(422) Verification of deductions required
- 41.2(422) Federal rulings and regulations
- 41.3(422) Federal income tax deduction and federal refund
- 41.4(422) Optional standard deduction

41.5(422)	Itemized deductions
41.6(422)	Itemized deductions—separate returns by spouses
41.7(422)	Itemized deductions—part-year residents
41.8(422)	Itemized deductions—nonresidents
41.9(422)	Annualizing income
41.10(422)	Income tax averaging
41.11(422)	Reduction in state itemized deductions for certain high-income taxpayers
41.12(422)	Deduction for home mortgage interest for taxpayers with mortgage interest credit
41.13(422)	Iowa income taxes and Iowa tax refund

## CHAPTER 42

## ADJUSTMENTS TO COMPUTED TAX AND TAX CREDITS

42.1(257,422)	School district surtax
42.2(422D)	Emergency medical services income surtax
42.3(422)	Exemption credits
42.4(422)	Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa
42.5(422)	Nonresident and part-year resident credit
42.6(422)	Out-of-state tax credits
42.7(422)	Out-of-state tax credit for minimum tax
42.8(422)	Withholding and estimated tax credits
42.9(422)	Motor fuel credit
42.10(422)	Alternative minimum tax credit for minimum tax paid in a prior tax year
42.11(15,422)	Research activities credit
42.12(422)	New jobs credit
42.13(422)	Earned income credit
42.14(15)	Investment tax credit—new jobs and income program and enterprise zone program
42.15(422)	Child and dependent care credit
42.16(422)	Franchise tax credit
42.17(15E)	Eligible housing business tax credit
42.18(422)	Assistive device tax credit
42.19(404A,422)	Historic preservation and cultural and entertainment district tax credit
42.20(422)	Ethanol blended gasoline tax credit
42.21(15E)	Eligible development business investment tax credit
42.22(15E,422)	Venture capital credits
42.23(15)	New capital investment program tax credits
42.24(15E,422)	Endow Iowa tax credit
42.25(422)	Soy-based cutting tool oil tax credit
42.26(15I,422)	Wage-benefits tax credit
42.27(422,476B)	Wind energy production tax credit
42.28(422,476C)	Renewable energy tax credit
42.29(15)	High quality job creation program
42.30(15E,422)	Economic development region revolving fund tax credit
42.31(422)	Early childhood development tax credit
42.32(422)	School tuition organization tax credit
42.33(422)	E-85 gasoline promotion tax credit
42.34(422)	Biodiesel blended fuel tax credit
42.35(422)	Soy-based transformer fluid tax credit
42.36(175,422)	Agricultural assets transfer tax credit
42.37(15,422)	Film qualified expenditure tax credit
42.38(15,422)	Film investment tax credit
42.39(422)	Ethanol promotion tax credit

42.40(422)	Charitable conservation contribution tax credit
42.41(15,422)	Redevelopment tax credit
42.42(15)	High quality jobs program
42.43(16,422)	Disaster recovery housing project tax credit
42.44(422)	Deduction of credits
42.45(15)	Aggregate tax credit limit for certain economic development programs
42.46(422)	E-15 plus gasoline promotion tax credit

## CHAPTER 43

## ASSESSMENTS AND REFUNDS

43.1(422)	Notice of discrepancies
43.2(422)	Notice of assessment, supplemental assessments and refund adjustments
43.3(422)	Overpayments of tax
43.4(68A,422,456A)	Optional designations of funds by taxpayer
43.5(422)	Abatement of tax
43.6 and 43.7	Reserved
43.8(422)	Livestock production credit refunds for corporate taxpayers and individual taxpayers

## CHAPTER 44

## PENALTY AND INTEREST

44.1(422)	Penalty
44.2(422)	Computation of interest on unpaid tax
44.3(422)	Computation of interest on refunds resulting from net operating losses
44.4(422)	Computation of interest on overpayments

## CHAPTER 45

## PARTNERSHIPS

45.1(422)	General rule
45.2(422)	Partnership returns
45.3(422)	Contents of partnership return
45.4(422)	Distribution and taxation of partnership income

## CHAPTER 46

## WITHHOLDING

46.1(422)	Who must withhold
46.2(422)	Computation of amount withheld
46.3(422)	Forms, returns and reports
46.4(422)	Withholding on nonresidents
46.5(422)	Penalty and interest
46.6(422)	Withholding tax credit to workforce development fund
46.7(422)	ACE training program credits from withholding
46.8(260E)	New job tax credit from withholding
46.9(15)	Supplemental new jobs credit from withholding and alternative credit for housing assistance programs
46.10(403)	Targeted jobs withholding tax credit

## CHAPTER 47

Reserved

## CHAPTER 48

## COMPOSITE RETURNS

48.1(422)	Composite returns
48.2(422)	Definitions

48.3(422)	Filing requirements
48.4	Reserved
48.5(422)	Composite return required by director
48.6(422)	Determination of composite Iowa income
48.7(422)	Determination of composite Iowa tax
48.8(422)	Estimated tax
48.9(422)	Time and place for filing

#### CHAPTER 49

##### ESTIMATED INCOME TAX FOR INDIVIDUALS

49.1(422)	Who must pay estimated income tax
49.2(422)	Time for filing and payment of tax
49.3(422)	Estimated tax for nonresidents
49.4(422)	Special estimated tax periods
49.5(422)	Reporting forms
49.6(422)	Penalty—underpayment of estimated tax
49.7(422)	Estimated tax carryforwards and how the carryforward amounts are affected under different circumstances

#### CHAPTER 50

##### APPORTIONMENT OF INCOME FOR RESIDENT SHAREHOLDERS OF S CORPORATIONS

50.1(422)	Apportionment of income for resident shareholders of S corporations
50.2(422)	Definitions
50.3(422)	Distributions
50.4(422)	Computation of net S corporation income
50.5(422)	Computation of federal tax on S corporation income
50.6(422)	Income allocable to Iowa
50.7(422)	Credit for taxes paid to another state
50.8	Reserved
50.9(422)	Examples for tax periods beginning prior to January 1, 2002
50.10(422)	Example for tax periods beginning on or after January 1, 2002

#### TITLE VI CORPORATION

#### CHAPTER 51 ADMINISTRATION

51.1(422)	Definitions
51.2(422)	Statutes of limitation
51.3(422)	Retention of records
51.4(422)	Cancellation of authority to do business
51.5(422)	Authority for deductions
51.6(422)	Jeopardy assessments
51.7(422)	Information confidential
51.8(422)	Power of attorney
51.9(422)	Delegation of authority to audit and examine

#### CHAPTER 52

##### FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST, AND TAX CREDITS

52.1(422)	Who must file
52.2(422)	Time and place for filing return
52.3(422)	Form for filing

52.4(422)	Payment of tax
52.5(422)	Minimum tax
52.6(422)	Motor fuel credit
52.7(422)	Research activities credit
52.8(422)	New jobs credit
52.9	Reserved
52.10(15)	New jobs and income program tax credits
52.11(422)	Refunds and overpayments
52.12(422)	Deduction of credits
52.13(422)	Livestock production credits
52.14(15E)	Enterprise zone tax credits
52.15(15E)	Eligible housing business tax credit
52.16(422)	Franchise tax credit
52.17(422)	Assistive device tax credit
52.18(404A,422)	Historic preservation and cultural and entertainment district tax credit
52.19(422)	Ethanol blended gasoline tax credit
52.20(15E)	Eligible development business investment tax credit
52.21(15E,422)	Venture capital credits
52.22(15)	New capital investment program tax credits
52.23(15E,422)	Endow Iowa tax credit
52.24(422)	Soy-based cutting tool oil tax credit
52.25(15I,422)	Wage-benefits tax credit
52.26(422,476B)	Wind energy production tax credit
52.27(422,476C)	Renewable energy tax credit
52.28(15)	High quality job creation program
52.29(15E,422)	Economic development region revolving fund tax credit
52.30(422)	E-85 gasoline promotion tax credit
52.31(422)	Biodiesel blended fuel tax credit
52.32(422)	Soy-based transformer fluid tax credit
52.33(175,422)	Agricultural assets transfer tax credit
52.34(15,422)	Film qualified expenditure tax credit
52.35(15,422)	Film investment tax credit
52.36(422)	Ethanol promotion tax credit
52.37(422)	Charitable conservation contribution tax credit
52.38(422)	School tuition organization tax credit
52.39(15,422)	Redevelopment tax credit
52.40(15)	High quality jobs program
52.41(15)	Aggregate tax credit limit for certain economic development programs
52.42(16,422)	Disaster recovery housing project tax credit
52.43(422)	E-15 plus gasoline promotion tax credit

## CHAPTER 53

## DETERMINATION OF NET INCOME

53.1(422)	Computation of net income for corporations
53.2(422)	Net operating loss carrybacks and carryovers
53.3(422)	Capital loss carryback
53.4(422)	Net operating and capital loss carrybacks and carryovers
53.5(422)	Interest and dividends from federal securities
53.6(422)	Interest and dividends from foreign securities, and securities of state and their political subdivisions
53.7(422)	Safe harbor leases
53.8(422)	Additions to federal taxable income

53.9(422)	Gains and losses on property acquired before January 1, 1934
53.10(422)	Work opportunity tax and alcohol fuel credit
53.11(422)	Additional deduction for wages paid or accrued for work done in Iowa by certain individuals
53.12(422)	Federal income tax deduction
53.13(422)	Iowa income taxes and Iowa tax refund
53.14(422)	Method of accounting, accounting period
53.15(422)	Consolidated returns
53.16(422)	Federal rulings and regulations
53.17(422)	Depreciation of speculative shell buildings
53.18(422)	Deduction of multipurpose vehicle registration fee
53.19(422)	Deduction of foreign dividends
53.20(422)	Employer social security credit for tips
53.21(422)	Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust
53.22(422)	Additional first-year depreciation allowance
53.23(422)	Section 179 expensing
53.24(422)	Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain
53.25(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
53.26(422)	Exclusion of biodiesel production refund

#### CHAPTER 54

##### ALLOCATION AND APPORTIONMENT

54.1(422)	Basis of corporate tax
54.2(422)	Allocation or apportionment of investment income
54.3(422)	Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978
54.4(422)	Net gains and losses from the sale of assets
54.5(422)	Where income is derived from the manufacture or sale of tangible personal property
54.6(422)	Apportionment of income derived from business other than the manufacture or sale of tangible personal property
54.7(422)	Apportionment of income of transportation, communications, and certain public utilities corporations
54.8(422)	Apportionment of income derived from more than one business activity carried on within a single corporate structure
54.9(422)	Allocation and apportionment of income in special cases

#### CHAPTER 55

##### ASSESSMENTS, REFUNDS, APPEALS

55.1(422)	Notice of discrepancies
55.2(422)	Notice of assessment
55.3(422)	Refund of overpaid tax
55.4(421)	Abatement of tax
55.5(422)	Protests

#### CHAPTER 56

##### ESTIMATED TAX FOR CORPORATIONS

56.1(422)	Who must pay estimated tax
56.2(422)	Time for filing and payment of tax
56.3(422)	Special estimate periods
56.4(422)	Reporting forms

- 56.5(422) Penalties
- 56.6(422) Overpayment of estimated tax

TITLE VII  
FRANCHISE

CHAPTER 57  
ADMINISTRATION

- 57.1(422) Definitions
- 57.2(422) Statutes of limitation
- 57.3(422) Retention of records
- 57.4(422) Authority for deductions
- 57.5(422) Jeopardy assessments
- 57.6(422) Information deemed confidential
- 57.7(422) Power of attorney
- 57.8(422) Delegation to audit and examine

CHAPTER 58  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST,  
AND TAX CREDITS

- 58.1(422) Who must file
- 58.2(422) Time and place for filing return
- 58.3(422) Form for filing
- 58.4(422) Payment of tax
- 58.5(422) Minimum tax
- 58.6(422) Refunds and overpayments
- 58.7(422) Allocation of franchise tax revenues
- 58.8(15E) Eligible housing business tax credit
- 58.9(15E) Eligible development business investment tax credit
- 58.10(422) Historic preservation and cultural and entertainment district tax credit
- 58.11(15E,422) Venture capital credits
- 58.12(15) New capital investment program tax credits
- 58.13(15E,422) Endow Iowa tax credit
- 58.14(15I,422) Wage-benefits tax credit
- 58.15(422,476B) Wind energy production tax credit
- 58.16(422,476C) Renewable energy tax credit
- 58.17(15) High quality job creation program
- 58.18(15E,422) Economic development region revolving fund tax credit
- 58.19(15,422) Film qualified expenditure tax credit
- 58.20(15,422) Film investment tax credit
- 58.21(15) High quality jobs program

CHAPTER 59  
DETERMINATION OF NET INCOME

- 59.1(422) Computation of net income for financial institutions
- 59.2(422) Net operating loss carrybacks and carryovers
- 59.3(422) Capital loss carryback
- 59.4(422) Net operating and capital loss carrybacks and carryovers
- 59.5(422) Interest and dividends from federal securities
- 59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions
- 59.7(422) Safe harbor leases
- 59.8(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals

59.9(422)	Work opportunity tax credit
59.10	Reserved
59.11(422)	Gains and losses on property acquired before January 1, 1934
59.12(422)	Federal income tax deduction
59.13(422)	Iowa franchise taxes
59.14(422)	Method of accounting, accounting period
59.15(422)	Consolidated returns
59.16(422)	Federal rulings and regulations
59.17	Reserved
59.18(422)	Depreciation of speculative shell buildings
59.19(422)	Deduction of multipurpose vehicle registration fee
59.20(422)	Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995
59.21(422)	S corporation and limited liability company financial institutions
59.22(422)	Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust
59.23(422)	Additional first-year depreciation allowance
59.24(422)	Section 179 expensing

#### ALLOCATION AND APPORTIONMENT

59.25(422)	Basis of franchise tax
59.26(422)	Allocation and apportionment
59.27(422)	Net gains and losses from the sale of assets
59.28(422)	Apportionment factor
59.29(422)	Allocation and apportionment of income in special cases

#### CHAPTER 60

##### ASSESSMENTS, REFUNDS, APPEALS

60.1(422)	Notice of discrepancies
60.2(422)	Notice of assessment
60.3(422)	Refund of overpaid tax
60.4(421)	Abatement of tax
60.5(422)	Protests

#### CHAPTER 61

##### ESTIMATED TAX FOR FINANCIAL INSTITUTIONS

61.1(422)	Who must pay estimated tax
61.2(422)	Time for filing and payment of tax
61.3(422)	Special estimate periods
61.4(422)	Reporting forms
61.5(422)	Penalties
61.6(422)	Overpayment of estimated tax

#### CHAPTERS 62 to 66

Reserved

#### TITLE VIII MOTOR FUEL

#### CHAPTER 67

##### ADMINISTRATION

67.1(452A)	Definitions
67.2(452A)	Statute of limitations, supplemental assessments and refund adjustments
67.3(452A)	Taxpayers required to keep records
67.4(452A)	Audit—costs

67.5(452A)	Estimate gallonage
67.6(452A)	Timely filing of returns, reports, remittances, applications, or requests
67.7(452A)	Extension of time to file
67.8(452A)	Penalty and interest
67.9(452A)	Penalty and enforcement provisions
67.10(452A)	Application of remittance
67.11(452A)	Reports, returns, records—variations
67.12(452A)	Form of invoice
67.13(452A)	Credit card invoices
67.14(452A)	Original invoice retained by purchaser—certified copy if lost
67.15(452A)	Taxes erroneously or illegally collected
67.16(452A)	Credentials and receipts
67.17(452A)	Information confidential
67.18(452A)	Delegation to audit and examine
67.19(452A)	Practice and procedure before the department of revenue
67.20(452A)	Time for filing protest
67.21(452A)	Bonding procedure
67.22(452A)	Tax refund offset
67.23(452A)	Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses
67.24(452A)	Reinstatement of license canceled for cause
67.25(452A)	Fuel used in implements of husbandry
67.26(452A)	Excess tax collected
67.27(452A)	Retailer gallons report

## CHAPTER 68

## MOTOR FUEL AND UNDYED SPECIAL FUEL

68.1(452A)	Definitions
68.2(452A)	Tax rates—time tax attaches—responsible party
68.3(452A)	Exemption
68.4(452A)	Ethanol blended gasoline taxation—nonterminal location
68.5(452A)	Tax returns—computations
68.6(452A)	Distribution allowance
68.7(452A)	Supplier credit—uncollectible account
68.8(452A)	Refunds
68.9(452A)	Claim for refund—payment of claim
68.10(452A)	Refund permit
68.11(452A)	Revocation of refund permit
68.12(452A)	Income tax credit in lieu of refund
68.13(452A)	Reduction of refund—sales tax
68.14(452A)	Terminal withdrawals—meters
68.15(452A)	Terminal and nonterminal storage facility reports and records
68.16(452A)	Method of reporting taxable gallonage
68.17(452A)	Transportation reports
68.18(452A)	Bill of lading or manifest requirements

## CHAPTER 69

LIQUEFIED PETROLEUM GAS—  
COMPRESSED NATURAL GAS

69.1(452A)	Definitions
69.2(452A)	Tax rates—time tax attaches—responsible party—payment of the tax
69.3(452A)	Penalty and interest
69.4(452A)	Bonding procedure

69.5(452A)	Persons authorized to place L.P.G. or C.N.G. in the fuel supply tank of a motor vehicle
69.6(452A)	Requirements to be licensed
69.7(452A)	Licensed metered pumps
69.8(452A)	Single license for each location
69.9(452A)	Dealer's and user's license nonassignable
69.10(452A)	Separate storage—bulk sales—highway use
69.11(452A)	Combined storage—bulk sales—highway sales or use
69.12(452A)	Exemption certificates
69.13(452A)	L.P.G. sold to the state of Iowa, its political subdivisions, contract carriers under contract with public schools to transport pupils or regional transit systems
69.14(452A)	Refunds
69.15(452A)	Notice of meter seal breakage
69.16(452A)	Location of records—L.P.G. or C.N.G. users and dealers

TITLE IX  
*PROPERTY*

CHAPTER 70  
REPLACEMENT TAX AND STATEWIDE PROPERTY TAX

DIVISION I  
REPLACEMENT TAX

70.1(437A)	Who must file return
70.2(437A)	Time and place for filing return
70.3(437A)	Form for filing
70.4(437A)	Payment of tax
70.5(437A)	Statute of limitations
70.6(437A)	Billings
70.7(437A)	Refunds
70.8(437A)	Abatement of tax
70.9(437A)	Taxpayers required to keep records
70.10(437A)	Credentials
70.11(437A)	Audit of records
70.12(437A)	Collections/reimbursements
70.13(437A)	Information confidential

DIVISION II  
STATEWIDE PROPERTY TAX

70.14(437A)	Who must file return
70.15(437A)	Time and place for filing return
70.16(437A)	Form for filing
70.17(437A)	Payment of tax
70.18(437A)	Statute of limitations
70.19(437A)	Billings
70.20(437A)	Refunds
70.21(437A)	Abatement of tax
70.22(437A)	Taxpayers required to keep records
70.23(437A)	Credentials
70.24(437A)	Audit of records

CHAPTER 71  
ASSESSMENT PRACTICES AND EQUALIZATION

71.1(405,427A,428,441,499B)	Classification of real estate
71.2(421,428,441)	Assessment and valuation of real estate

71.3(421,428,441)	Valuation of agricultural real estate
71.4(421,428,441)	Valuation of residential real estate
71.5(421,428,441)	Valuation of commercial real estate
71.6(421,428,441)	Valuation of industrial land and buildings
71.7(421,427A,428,441)	Valuation of industrial machinery
71.8(428,441)	Abstract of assessment
71.9(428,441)	Reconciliation report
71.10(421)	Assessment/sales ratio study
71.11(441)	Equalization of assessments by class of property
71.12(441)	Determination of aggregate actual values
71.13(441)	Tentative equalization notices
71.14(441)	Hearings before the director
71.15(441)	Final equalization order
71.16(441)	Alternative method of implementing equalization orders
71.17(441)	Special session of boards of review
71.18(441)	Judgment of assessors and local boards of review
71.19(441)	Conference boards
71.20(441)	Board of review
71.21(421,17A)	Property assessment appeal board
71.22(428,441)	Assessors
71.23 and 71.24	Reserved
71.25(441,443)	Omitted assessments
71.26(441)	Assessor compliance

## CHAPTER 72

### EXAMINATION AND CERTIFICATION OF ASSESSORS AND DEPUTY ASSESSORS

72.1(441)	Application for examination
72.2(441)	Examinations
72.3(441)	Equivalent of high school diploma
72.4(441)	Appraisal-related experience
72.5(441)	Regular certification
72.6(441)	Temporary certification
72.7	Reserved
72.8(441)	Deputy assessors—regular certification
72.9	Reserved
72.10(441)	Appointment of deputy assessors
72.11(441)	Special examinations
72.12(441)	Register of eligible candidates
72.13(441)	Course of study for provisional appointees
72.14(441)	Examining board
72.15(441)	Appointment of assessor
72.16(441)	Reappointment of assessor
72.17(441)	Removal of assessor
72.18(421,441)	Courses offered by the department of revenue

## CHAPTER 73

### PROPERTY TAX CREDIT AND RENT REIMBURSEMENT

73.1(425)	Eligible claimants
73.2(425)	Separate homesteads—husband and wife property tax credit
73.3(425)	Dual claims
73.4(425)	Multipurpose building
73.5(425)	Multidwelling

73.6(425)	Income
73.7(425)	Joint tenancy
73.8(425)	Amended claim
73.9(425)	Simultaneous homesteads
73.10(425)	Confidential information
73.11(425)	Mobile, modular, and manufactured homes
73.12(425)	Totally disabled
73.13(425)	Nursing homes
73.14(425)	Household
73.15(425)	Homestead
73.16(425)	Household income
73.17(425)	Timely filing of claims
73.18(425)	Separate homestead—husband and wife rent reimbursements
73.19(425)	Gross rent/rent constituting property taxes paid
73.20(425)	Leased land
73.21(425)	Property: taxable status
73.22(425)	Special assessments
73.23(425)	Suspended, delinquent, or canceled taxes
73.24(425)	Income: spouse
73.25(425)	Common law marriage
73.26	Reserved
73.27(425)	Special assessment credit
73.28(425)	Credit applied
73.29(425)	Deceased claimant
73.30(425)	Audit of claim
73.31(425)	Extension of time for filing a claim
73.32(425)	Annual adjustment factor
73.33(425)	Proration of claims
73.34(425)	Unreasonable hardship

## CHAPTER 74

## MOBILE, MODULAR, AND MANUFACTURED HOME TAX

74.1(435)	Definitions
74.2(435)	Movement of home to another county
74.3(435)	Sale of home
74.4(435)	Reduced tax rate
74.5(435)	Taxation—real estate
74.6(435)	Taxation—square footage
74.7(435)	Audit by department of revenue
74.8(435)	Collection of tax

## CHAPTER 75

## PROPERTY TAX ADMINISTRATION

75.1(441)	Tax year
75.2(445)	Partial payment of tax
75.3(445)	When delinquent
75.4(446)	Payment of subsequent year taxes by purchaser
75.5(428,433,434,437A,438)	Central assessment confidentiality
75.6(446)	Tax sale
75.7(445)	Refund of tax
75.8(614)	Delinquent property taxes

## CHAPTER 76

## DETERMINATION OF VALUE OF RAILROAD COMPANIES

- 76.1(434) Definitions of terms
- 76.2(434) Filing of annual reports
- 76.3(434) Comparable sales
- 76.4(434) Stock and debt approach to unit value
- 76.5(434) Income capitalization approach to unit value
- 76.6(434) Cost approach to unit value
- 76.7(434) Correlation
- 76.8(434) Allocation of unit value to state
- 76.9(434) Exclusions

## CHAPTER 77

## DETERMINATION OF VALUE OF UTILITY COMPANIES

- 77.1(428,433,437,438) Definition of terms
- 77.2(428,433,437,438) Filing of annual reports
- 77.3(428,433,437,438) Comparable sales
- 77.4(428,433,437,438) Stock and debt approach to unit value
- 77.5(428,433,437,438) Income capitalization approach to unit value
- 77.6(428,433,437,438) Cost approach to unit value
- 77.7(428,433,437,438) Correlation
- 77.8(428,433,437,438) Allocation of unit value to state

## CHAPTER 78

Reserved

## CHAPTER 79

## REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE

- 79.1(428A) Real estate transfer tax: Responsibility of county recorders
- 79.2(428A) Taxable status of real estate transfers
- 79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors
- 79.4(428A) Certain transfers of agricultural realty
- 79.5(428A) Form completion and filing requirements
- 79.6(428A) Public access to declarations of value

## CHAPTER 80

## PROPERTY TAX CREDITS AND EXEMPTIONS

- 80.1(425) Homestead tax credit
- 80.2(22,35,426A) Military service tax exemption
- 80.3(427) Pollution control and recycling property tax exemption
- 80.4(427) Low-rent housing for the elderly and persons with disabilities
- 80.5(427) Speculative shell buildings
- 80.6(427B) Industrial property tax exemption
- 80.7(427B) Assessment of computers and industrial machinery and equipment
- 80.8(404) Urban revitalization partial exemption
- 80.9(427C,441) Forest and fruit-tree reservations
- 80.10(427B) Underground storage tanks
- 80.11(425A) Family farm tax credit
- 80.12(427) Methane gas conversion property
- 80.13(427B,476B) Wind energy conversion property
- 80.14(427) Mobile home park storm shelter
- 80.15(427) Barn and one-room schoolhouse preservation

80.16(426)	Agricultural land tax credit
80.17(427)	Indian housing property
80.18(427)	Property used in value-added agricultural product operations
80.19(427)	Dwelling unit property within certain cities
80.20(427)	Nursing facilities
80.21(368)	Annexation of property by a city
80.22(427)	Port authority
80.23(427A)	Concrete batch plants and hot mix asphalt facilities
80.24(427)	Airport property
80.25(427A)	Car wash equipment
80.26(427)	Web search portal and data center business property
80.27(427)	Privately owned libraries and art galleries
80.28(404B)	Disaster revitalization area
80.29 to 80.49	Reserved
80.50(427,441)	Responsibility of local assessors
80.51(441)	Responsibility of local boards of review
80.52(427)	Responsibility of director of revenue
80.53(427)	Application for exemption
80.54(427)	Partial exemptions
80.55(427,441)	Taxable status of property
80.56(427)	Abatement of taxes

TITLE X  
*CIGARETTES AND TOBACCO*

CHAPTER 81  
ADMINISTRATION

81.1(453A)	Definitions
81.2(453A)	Credentials and receipts
81.3(453A)	Examination of records
81.4(453A)	Records
81.5(453A)	Form of invoice
81.6(453A)	Audit of records—cost, supplemental assessments and refund adjustments
81.7(453A)	Bonds
81.8(98)	Penalties
81.9(98)	Interest
81.10(98)	Waiver of penalty or interest
81.11(453A)	Appeal—practice and procedure before the department
81.12(453A)	Permit—license revocation
81.13(453A)	Permit applications and denials
81.14(453A)	Confidential information
81.15(98)	Request for waiver of penalty
81.16(453A)	Inventory tax

CHAPTER 82  
CIGARETTE TAX

82.1(453A)	Permits required
82.2(453A)	Partial year permits—payment—refund—exchange
82.3(453A)	Bond requirements
82.4(453A)	Cigarette tax—attachment—exemption—exclusivity of tax
82.5(453A)	Cigarette tax stamps
82.6(453A)	Banks authorized to sell stamps—requirements—restrictions
82.7(453A)	Purchase of cigarette tax stamps—discount

- 82.8(453A) Affixing stamps
- 82.9(453A) Reports
- 82.10(453A) Manufacturer's samples
- 82.11(453A) Refund of tax—unused and destroyed stamps

CHAPTER 83  
TOBACCO TAX

- 83.1(453A) Licenses
- 83.2(453A) Distributor bond
- 83.3(453A) Tax on tobacco products
- 83.4(453A) Tax on little cigars
- 83.5(453A) Distributor discount
- 83.6(453A) Distributor returns
- 83.7(453A) Consumer's return
- 83.8(453A) Transporter's report
- 83.9(453A) Free samples
- 83.10(453A) Credits and refunds of taxes
- 83.11(453A) Sales exempt from tax
- 83.12(81GA,HF339) Retail permits required
- 83.13(81GA,HF339) Permit issuance fee
- 83.14(81GA,HF339) Refunds of permit fee
- 83.15(81GA,HF339) Application for permit
- 83.16(81GA,HF339) Records and reports
- 83.17(81GA,HF339) Penalties

CHAPTER 84  
UNFAIR CIGARETTE SALES

- 84.1(421B) Definitions
- 84.2(421B) Minimum price
- 84.3(421B) Combination sales
- 84.4(421B) Retail redemption of coupons
- 84.5(421B) Exempt sales
- 84.6(421B) Notification of manufacturer's price increase
- 84.7(421B) Permit revocation

CHAPTER 85  
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I  
TOBACCO MASTER SETTLEMENT AGREEMENT

- 85.1(453C) National uniform tobacco settlement
- 85.2(453C) Definitions
- 85.3(453C) Report required
- 85.4(453C) Report information
- 85.5(453C) Record-keeping requirement
- 85.6(453C) Confidentiality
- 85.7 to 85.20 Reserved

DIVISION II  
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

- 85.21(80GA,SF375) Definitions
- 85.22(80GA,SF375) Directory of tobacco product manufacturers

TITLE XI  
*INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX*

CHAPTER 86  
INHERITANCE TAX

86.1(450)	Administration
86.2(450)	Inheritance tax returns and payment of tax
86.3(450)	Audits, assessments and refunds
86.4(450)	Appeals
86.5(450)	Gross estate
86.6(450)	The net estate
86.7(450)	Life estate, remainder and annuity tables—in general
86.8(450B)	Special use valuation
86.9(450)	Market value in the ordinary course of trade
86.10(450)	Alternate valuation date
86.11(450)	Valuation—special problem areas
86.12(450)	The inheritance tax clearance
86.13(450)	No lien on the surviving spouse's share of the estate
86.14(450)	Computation of shares
86.15(450)	Applicability

CHAPTER 87  
IOWA ESTATE TAX

87.1(451)	Administration
87.2(451)	Confidential and nonconfidential information
87.3(451)	Tax imposed, tax returns, and tax due
87.4(451)	Audits, assessments and refunds
87.5(451)	Appeals
87.6(451)	Applicable rules

CHAPTER 88  
GENERATION SKIPPING TRANSFER TAX

88.1(450A)	Administration
88.2(450A)	Confidential and nonconfidential information
88.3(450A)	Tax imposed, tax due and tax returns
88.4(450A)	Audits, assessments and refunds
88.5(450A)	Appeals
88.6(450A)	Generation skipping transfers prior to Public Law 99-514

CHAPTER 89  
FIDUCIARY INCOME TAX

89.1(422)	Administration
89.2(422)	Confidentiality
89.3(422)	Situs of trusts
89.4(422)	Fiduciary returns and payment of the tax
89.5(422)	Extension of time to file and pay the tax
89.6(422)	Penalties
89.7(422)	Interest or refunds on net operating loss carrybacks
89.8(422)	Reportable income and deductions
89.9(422)	Audits, assessments and refunds
89.10(422)	The income tax certificate of acquittance
89.11(422)	Appeals to the director

## CHAPTER 90

Reserved

## TITLE XII

*MARIJUANA AND CONTROLLED  
SUBSTANCES STAMP TAX*

## CHAPTER 91

ADMINISTRATION OF MARIJUANA AND  
CONTROLLED SUBSTANCES STAMP TAX

- 91.1(453B) Marijuana and controlled substances stamp tax
- 91.2(453B) Sales of stamps
- 91.3(453B) Refunds pertaining to unused stamps

## CHAPTERS 92 to 96

Reserved

## TITLE XIII

## CHAPTERS 97 to 101

Reserved

## TITLE XIV

*HOTEL AND MOTEL TAX*

## CHAPTER 102

Reserved

## CHAPTER 103

STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND  
MOTEL TAXES—ADMINISTRATION

- 103.1(423A) Definitions, administration, and imposition
- 103.2(423A) Statute of limitations, supplemental assessments and refund adjustments
- 103.3(423A) Credentials and receipts
- 103.4(423A) Retailers required to keep records
- 103.5(423A) Audit of records
- 103.6(423A) Billings
- 103.7(423A) Collections
- 103.8(423A) No property exempt from distress and sale
- 103.9(423A) Information confidential
- 103.10(423A) Bonding procedure
- 103.11(423A) Sales tax
- 103.12(423A) Judicial review
- 103.13(423A) Registration
- 103.14(423A) Notification
- 103.15(423A) Certification of funds

## CHAPTER 104

## HOTEL AND MOTEL—

## FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST

- 104.1(423A) Returns, time for filing
- 104.2(423A) Remittances
- 104.3(423A) Permits
- 104.4(423A) Sale of business
- 104.5(423A) Bankruptcy, insolvency or assignment for benefit of creditors
- 104.6(423A) Claim for refund of tax

104.7(423A)	Application of payments
104.8(423A)	Interest and penalty
104.9(423A)	Request for waiver of penalty
104.10(423A)	Extension of time for filing
104.11(421,423A)	Personal liability of corporate officers and partners for unpaid tax
104.12(421,423A)	Good faith exception for successor liability

## CHAPTER 105

## LOCALLY IMPOSED HOTEL AND MOTEL TAX

105.1(423A)	Local option
105.2(423A)	Tax rate
105.3(423A)	Tax base
105.4(423A)	Imposition dates
105.5(423A)	Adding or absorbing tax
105.6(423A)	Termination dates

## CHAPTER 106

## Reserved

## TITLE XV

*LOCAL OPTION SALES AND  
SERVICE TAX*

## CHAPTER 107

## LOCAL OPTION SALES AND SERVICE TAX

107.1(422B)	Definitions
107.2(422B)	Local option sales and service tax
107.3(422B)	Transactions subject to and excluded from local option sales tax
107.4(422B)	Transactions subject to and excluded from local option service tax
107.5(422B)	Single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax
107.6(422B)	Motor vehicle, recreational vehicle, and recreational boat rental subject to local option service tax
107.7(422B)	Special rules regarding utility payments
107.8(423B)	Contacts with county necessary to impose collection obligation upon a retailer
107.9(423B,423E)	Sales not subject to local option tax, including transactions subject to Iowa use tax
107.10(422B)	Local option sales and service tax payments to local governments
107.11(422B)	Procedure if county of receipt's origins is unknown
107.12(422B)	Computation of local option tax due from mixed sales on excursion boats
107.13(421,422B)	Officers and partners, personal liability for unpaid tax
107.14(422B)	Local option sales and service tax imposed by a city
107.15(422B)	Application of payments
107.16(422B)	Construction contractor refunds
107.17(422B,422E)	Discretionary application of local option tax revenues

## CHAPTER 108

LOCAL OPTION SCHOOL INFRASTRUCTURE  
SALES AND SERVICE TAX

108.1(422E)	Definitions
108.2(422E)	Authorization, rate of tax, imposition, use of revenues, and administration
108.3(422E)	Collection of the tax
108.4(422E)	Similarities to the local option sales and service tax imposed in Iowa Code chapter 422B and 701—Chapter 107
108.5(422E)	Sales not subject to local option tax, including transactions subject to Iowa use tax

108.6(422E)	Deposits of receipts
108.7(422E)	Local option school infrastructure sales and service tax payments to school districts
108.8(422E)	Construction contract refunds
108.9(422E)	28E agreements

## CHAPTER 109

NEW SCHOOL INFRASTRUCTURE LOCAL OPTION SALES AND SERVICES TAX—  
EFFECTIVE ON OR AFTER APRIL 1, 2003, THROUGH FISCAL YEARS  
ENDING DECEMBER 31, 2022

109.1(422E)	Use of revenues and definitions
109.2(422E)	Imposition of tax
109.3(422E)	Application of law
109.4(422E)	Collection of tax and distribution
109.5(422E)	Insufficient funds
109.6(422E)	Use of revenues by the school district
109.7(422E)	Bonds
109.8(422E)	28E agreements

## CHAPTERS 110 to 119

Reserved

## TITLE XVI

*REASSESSMENT EXPENSE FUND*

## CHAPTER 120

## REASSESSMENT EXPENSE FUND

120.1(421)	Reassessment expense fund
120.2(421)	Application for loan
120.3(421)	Criteria for granting loan

## CHAPTER 121

Reserved

## TITLE XVII

*ASSESSOR CONTINUING EDUCATION*

## CHAPTER 122

## ADMINISTRATION

122.1(441)	Establishment
122.2(441)	General operation
122.3(441)	Location
122.4(441)	Purpose

## CHAPTER 123

## CERTIFICATION

123.1(441)	General
123.2(441)	Confidentiality
123.3(441)	Certification of assessors
123.4(441)	Certification of deputy assessors
123.5(441)	Type of credit
123.6(441)	Retaking examination
123.7(441)	Instructor credit
123.8(441)	Conference board and assessor notification
123.9(441)	Director of revenue notification

CHAPTER 124  
COURSES

- 124.1(441) Course selection
- 124.2(441) Scheduling of courses
- 124.3(441) Petitioning to add, delete or modify courses
- 124.4(441) Course participation
- 124.5(441) Retaking a course
- 124.6(441) Continuing education program for assessors

CHAPTER 125  
REVIEW OF AGENCY ACTION

- 125.1(441) Decisions final
- 125.2(441) Grievance and appeal procedures

CHAPTERS 126 to 149  
Reserved

TITLE XVIII  
*DEBT COLLECTION*

CHAPTER 150  
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

- 150.1(421,26USC6402) Purpose and general application of offset of a federal tax overpayment to collect an Iowa income tax obligation
- 150.2(421,26USC6402) Definitions
- 150.3(421,26USC6402) Prerequisites for requesting a federal offset
- 150.4(421,26USC6402) Procedure after submission of evidence
- 150.5(421,26USC6402) Notice by Iowa to the Secretary to request federal offset
- 150.6(421,26USC6402) Erroneous payments to Iowa
- 150.7(421,26USC6402) Correcting and updating notice to the Secretary

CHAPTER 151  
COLLECTION OF DEBTS OWED THE STATE  
OF IOWA OR A STATE AGENCY

- 151.1(421) Definitions
- 151.2(421) Scope and purpose
- 151.3(421) Participation guidelines
- 151.4(421) Duties of the agency
- 151.5(421) Duties of the department—performance of collection
- 151.6(421) Payment of collected amounts
- 151.7(421) Reimbursement for collection of liabilities
- 151.8(421) Confidentiality of information
- 151.9(421) Subpoena of records from public or private utility companies

CHAPTER 152  
DEBT COLLECTION AND SELLING OF PROPERTY  
TO COLLECT DELINQUENT DEBTS

- 152.1(421,422,626,642) Definitions
- 152.2(421,422,626,642) Sale of property
- 152.3(421,422,626,642) Means of sale

CHAPTER 153  
LICENSE SANCTIONS FOR COLLECTION OF DEBTS OWED THE STATE OF IOWA OR  
A STATE AGENCY

153.1(272D)	Definitions
153.2(272D)	Purpose and use
153.3(272D)	Challenge to issuance of certificate of noncompliance
153.4(272D)	Use of information
153.5(272D)	Notice to person of potential sanction of license
153.6(272D)	Conference
153.7(272D)	Issuance of certificate of noncompliance
153.8(272D)	Stay of certificate of noncompliance
153.9(272D)	Written agreements
153.10(272D)	Decision of the unit
153.11(272D)	Withdrawal of certificate of noncompliance
153.12(272D)	Certificate of noncompliance to licensing authority
153.13(272D)	Requirements of the licensing authority
153.14(272D)	District court hearing

CHAPTER 154  
CHALLENGES TO ADMINISTRATIVE LEVIES AND  
PUBLICATION OF NAMES OF DEBTORS

154.1(421)	Definitions
154.2(421)	Administrative levies
154.3(421)	Challenges to administrative levies
154.4(421)	Form and time of challenge
154.5(421)	Issues that may be raised
154.6(421)	Review of challenge
154.7(421)	Actions where there is a mistake of fact
154.8(421)	Action if there is not a mistake of fact
154.9 to 154.15	Reserved
154.16(421)	List for publication
154.17(421)	Names to be published
154.18(421)	Release of information

CHAPTERS 155 to 210  
Reserved

TITLE XIX  
*STREAMLINED SALES AND USE TAX RULES*

CHAPTER 211  
DEFINITIONS

211.1(423)	Definitions
------------	-------------

CHAPTER 212  
ELEMENTS INCLUDED IN AND EXCLUDED  
FROM A TAXABLE SALE AND SALES PRICE

212.1(423)	Tax not to be included in price
212.2(423)	Finance charge
212.3(423)	Retailers' discounts, trade discounts, rebates and coupons
212.4(423)	Excise tax included in and excluded from sales price
212.5(423)	Trade-ins
212.6(423)	Installation charges when tangible personal property is sold at retail

- 212.7(423) Service charge and gratuity
- 212.8(423) Payment from a third party

## CHAPTER 213

## MISCELLANEOUS TAXABLE SALES

- 213.1(423) Tax imposed
- 213.2(423) Athletic events
- 213.3(423) Conditional sales contracts
- 213.4(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc.
- 213.5(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value
- 213.6(423) Communication services furnished by hotel to its guests
- 213.7(423) Consignment sales
- 213.8(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions
- 213.9(423) Explosives used in mines, quarries and elsewhere
- 213.10(423) Sales on layaway
- 213.11(423) Memorial stones
- 213.12(423) Creditors and trustees
- 213.13(423) Sale of pets
- 213.14(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale
- 213.15(423) Rental of personal property in connection with the operation of amusements
- 213.16(423) Repossessed goods
- 213.17(423) Sales of signs at retail
- 213.18(423) Tangible personal property made to order
- 213.19(423) Used or secondhand tangible personal property
- 213.20(423) Carpeting and other floor coverings
- 213.21(423) Goods damaged in transit
- 213.22(423) Snowmobiles, motorboats, and certain other vehicles
- 213.23(423) Photographers and photostaters
- 213.24(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations
- 213.25(423) Urban transit systems

## CHAPTER 214

## MISCELLANEOUS NONTAXABLE TRANSACTIONS

- 214.1(423) Corporate mergers which do not involve taxable sales of tangible personal property or services
- 214.2(423) Sales of prepaid merchandise cards
- 214.3(423) Demurrage charges
- 214.4(423) Beverage container deposits
- 214.5(423) Exempt sales by excursion boat licensees
- 214.6(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client

## CHAPTERS 215 to 218

Reserved

## CHAPTER 219

## SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

- 219.1(423) General information
- 219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute

219.3(423)	Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners
219.4(423)	Contractors, subcontractors or builders who are retailers
219.5(423)	Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa
219.6(423)	Tangible personal property used or consumed by the manufacturer thereof
219.7(423)	Prefabricated structures
219.8(423)	Types of construction contracts
219.9(423)	Machinery and equipment sales contracts with installation
219.10(423)	Construction contracts with equipment sales (mixed contracts)
219.11(423)	Distinguishing machinery and equipment from real property
219.12(423)	Tangible personal property which becomes structures
219.13(423)	Tax on enumerated services
219.14(423)	Transportation cost
219.15(423)	Start-up charges
219.16(423)	Liability of subcontractors
219.17(423)	Liability of sponsors
219.18(423)	Withholding
219.19(423)	Resale certificates
219.20(423)	Reporting for use tax
219.21(423)	Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders

## CHAPTERS 220 to 223

Reserved

## CHAPTER 224

## TELECOMMUNICATION SERVICES

224.1(423)	Taxable telecommunication service and ancillary service
224.2(423)	Definitions
224.3(423)	Imposition of tax
224.4(423)	Exempt from the tax
224.5(423)	Bundled transactions in telecommunication service
224.6(423)	Sourcing telecommunication service
224.7(423)	General billing issues

## CHAPTER 225

RESALE AND PROCESSING EXEMPTIONS PRIMARILY  
OF BENEFIT TO RETAILERS

225.1(423)	Paper or plastic plates, cups, and dishes, paper napkins, wooden or plastic spoons and forks, and straws
225.2(423)	A service purchased for resale
225.3(423)	Services used in the repair or reconditioning of certain tangible personal property
225.4(423)	Tangible personal property purchased by a person engaged in the performance of a service
225.5(423)	Maintenance or repair of fabric or clothing
225.6(423)	The sales price from the leasing of all tangible personal property subject to tax

## CHAPTER 226

## AGRICULTURAL RULES

226.1(423)	Sale or rental of farm machinery and equipment
226.2(423)	Packaging material used in agricultural production
226.3(423)	Irrigation equipment used in agricultural production

226.4(423)	Sale of a draft horse
226.5(423)	Veterinary services
226.6(423)	Commercial fertilizer and agricultural limestone
226.7(423)	Sales of breeding livestock
226.8(423)	Domesticated fowl
226.9(423)	Agricultural health promotion items
226.10(423)	Drainage tile
226.11(423)	Materials used for seed inoculations
226.12(423)	Fuel used in agricultural production
226.13(423)	Water used in agricultural production
226.14(423)	Bedding for agricultural livestock or fowl
226.15(423)	Sales by farmers
226.16(423)	Sales of livestock (including domesticated fowl) feeds
226.17(423)	Farm machinery, equipment, and replacement parts used in livestock or dairy production
226.18(423)	Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants
226.19(423)	Nonexclusive lists

CHAPTERS 227 to 229  
Reserved

CHAPTER 230  
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND  
OTHER PERSONS ENGAGED IN PROCESSING

230.1	Reserved
230.2(423)	Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing
230.3(423)	Services used in processing
230.4(423)	Chemicals, solvents, sorbents, or reagents used in processing
230.5(423)	Exempt sales of gases used in the manufacturing process
230.6(423)	Sale of electricity to water companies
230.7(423)	Wind energy conversion property
230.8(423)	Exempt sales or rentals of core making and mold making equipment, and sand handling equipment
230.9(423)	Chemical compounds used to treat water
230.10(423)	Exclusive web search portal business and its exemption
230.11(423)	Web search portal business and its exemption
230.12(423)	Large data center business exemption
230.13(423)	Data center business sales and use tax refunds

CHAPTER 231  
EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

231.1(423)	Newspapers, free newspapers and shoppers' guides
231.2(423)	Motor fuel, special fuel, aviation fuels and gasoline
231.3(423)	Sales of food and food ingredients
231.4(423)	Sales of candy
231.5(423)	Sales of prepared food
231.6(423)	Prescription drugs, medical devices, oxygen, and insulin
231.7(423)	Exempt sales of other medical devices which are not prosthetic devices
231.8(423)	Prosthetic devices, durable medical equipment, and mobility enhancing equipment
231.9(423)	Raffles
231.10(423)	Exempt sales of prizes

- 231.11(423) Modular homes
- 231.12(423) Access to on-line computer service
- 231.13(423) Sale or rental of information services
- 231.14(423) Exclusion from tax for property delivered by certain media
- 231.15(423) Exempt sales of clothing and footwear during two-day period in August
- 231.16(423) State sales tax phase-out on energies

CHAPTERS 232 to 234  
Reserved

CHAPTER 235  
REBATE OF IOWA SALES TAX PAID

- 235.1(423) Sanctioned automobile racetrack facilities

CHAPTERS 236 to 238  
Reserved

CHAPTER 239  
LOCAL OPTION SALES TAX URBAN RENEWAL PROJECTS

- 239.1(423B) Urban renewal project
- 239.2(423B) Definitions
- 239.3(423B) Establishing sales and revenue growth
- 239.4(423B) Requirements for cities adopting an ordinance
- 239.5(423B) Identification of retail establishments
- 239.6(423B) Calculation of base year taxable sales amount
- 239.7(423B) Determination of tax growth increment amount
- 239.8(423B) Distribution of tax base and growth increment amounts
- 239.9(423B) Example
- 239.10(423B) Ordinance term

CHAPTER 240  
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES  
AND USE TAX AGREEMENT

- 240.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used
- 240.2(423) Permissible categories of exemptions
- 240.3(423) Requirement of uniformity in the filing of returns and remittance of funds
- 240.4(423) Allocation of bad debts
- 240.5(423) Purchaser refund procedures
- 240.6(423) Relief from liability for reliance on taxability matrix
- 240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished
- 240.8(423) Prospective application of defining “retail sale” to include a lease or rental

CHAPTER 241  
EXCISE TAXES NOT GOVERNED BY THE STREAMLINED SALES AND  
USE TAX AGREEMENT

- 241.1(423A,423D) Purpose of the chapter
- 241.2(423A,423D) Director’s administration

DIVISION I  
STATE-IMPOSED HOTEL AND MOTEL TAX

- 241.3(423A) Definitions
- 241.4(423A) Imposition of tax
- 241.5(423A) Exemptions

DIVISION II  
EXCISE TAX ON SPECIFIC CONSTRUCTION MACHINERY AND EQUIPMENT

- 241.6(423D) Definitions
- 241.7(423D) Tax imposed
- 241.8(423D) Exemption



TITLE I  
ADMINISTRATION  
CHAPTER 6  
ORGANIZATION, PUBLIC INSPECTION  
[Prior to 10/7/87, see Revenue Department[730] Ch 6]

**701—6.1(17A) Establishment, organization, general course and method of operations, methods by which and location where the public may obtain information or make submissions or requests.**

**6.1(1)** *Establishment of the department.* By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5.

Effective July 1, 2003, the Iowa department of revenue and finance is titled the Iowa department of revenue.

The department of revenue in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

“The Department of Revenue is dedicated to serving the citizens of Iowa and other public officials, while performing the following mission:

“Collect all taxes due, which any person may be required by law to pay, but no more.

“In carrying out this mission the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees.”

The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50306.

**6.1(2)** *Organization of the department.* The department consists of the office of the director; the following divisions: compliance, property tax, policy and communications, revenue operations, internal services, and technology and information management; and the state board of tax review. For ease of administration, the director has organized the department’s divisions in some instances into bureaus, sections, subsections and units.

*a. The office of the director.* The office of the director consists of the director and the following areas within this office: strategic planning, internal audit, clerk of the hearing section, public/private partnership, and research and fiscal analysis. The essential functions of the director’s office include:

- (1) Overall management of the agency and review of protest and revocation cases on appeal.
- (2) Strategic planning and coordination of the future operations and goals of the department.
- (3) Providing financial checks and balances within the department.
- (4) The clerk of the hearing section receives all protests, tracks protests and coordinates protest processing.

(5) Public/private partnership provides for a working relationship between the public and private sector.

*b. Divisions.*

(1) Property tax division. The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for railroads, electric, water, and pipeline companies.

(2) Compliance division. The compliance division includes the examination section, investigative audit section, in-state field offices and out-of-state field offices. The essential functions of the compliance division include:

1. Examination, which includes office examination of returns, assessment, and review and approval of refund claims, and which identifies nonfilers and those that underreport income;
2. Investigative audit, which is responsible for audits for criminal prosecution, reviews cases for potential prosecution and represents the department in criminal proceedings and depositions;

3. In-state field offices, which provide assistance to taxpayers concerning procedure and perform audits; and

4. Out-of-state field offices, which perform audits for all taxes throughout the country from nine locations throughout the United States.

(3) Policy and communications division. The policy and communications division consists of audit services, taxpayer services, policy and tax research and data analysis. The essential functions of the policy and communications division include:

1. Audit services, which includes the development and review of audit programs and completed audits, manuals, and guidelines for auditors, and which coordinates the administrative process of protests and protest resolution;

2. Taxpayer services, which is responsible for responding to inquiries from the public, practitioners and other agencies, drafting brochures and graphics, completing returns, maintaining the department's library and Web page, and coordinating public education by the department;

3. Policy, which is responsible for the interpretation of legislation, statutes and cases, developing and maintaining rules for the department and monitoring tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports;

4. Tax research and data analysis, which provides research, data information, fiscal analysis and reporting, which includes fact-finding, defining issues, issue resolution, and projection of revenues, and evaluates the fiscal impact of tax legislation and policies on state budget.

(4) Internal services division. The essential functions of the internal services division include:

1. Central accounting, which includes operating budget development, maintenance and reporting; and

2. Employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service.

(5) Technology and information management division. This division consists of information resources management, application design and development, program management, program evaluation, operations, forms management, reporting, and technical planning and support. The essential functions of the technology and information management division include:

1. Application development, which includes system analysis, programming, database administration and support;

2. Forms management, which includes review and performing the function of compliance with federal and state law and managing electronic filing programs; and

3. Technical planning and support, which includes technical support to the agency on software and hardware issues, and which assists in application and development regarding technology-related issues.

(6) Revenue operations division. This division includes collections (accounts receivable, central collections, field office advanced collections), customer accounts, document processing, and data operations and information technology. The essential functions of the revenue operations division include:

1. Collections, which includes accounts receivable, central collections, field office advanced collections and customer accounts;

2. Document processing, which includes preparing tax information for processing, deposits and records; and

3. Data entry, which includes entry of all tax forms, files, and databases, and which edits taxpayer documents and mailing information.

**6.1(3)** *Methods by which and location where the public may obtain information or make submissions or requests.* The department of revenue maintains its principal office in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50306.

*a. Principal office.* Members of the public wishing to obtain information or make submissions or requests on any matters may do so at the department's principal office. Applications for permits or licenses may be obtained and submitted at the principal office, and any assistance needed in filling out the applications will be provided if the taxpayer so desires. Requests for confidential information should

be submitted to the director, and the appropriate form will be provided and should be filled out and submitted to the director. Members of the public wishing to inspect information required to be made available to members of the public may do so in the director's office.

*b. Regional offices.* Regional offices do not have facilities for making available all matters that are available for public inspection under 701—6.2(17A). The regional offices and auditors do have copies of all rules and will make them available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the principal office.

This rule is intended to implement Iowa Code sections 421.1, 421.2, 421.9, 421.14, 421.17, 422.1 and 422.72.

[ARC 9875B, IAB 11/30/11, effective 1/4/12]

**701—6.2(17A) Public inspection.** Effective July 1, 1975, Iowa Code section 17A.3(1)“c” and “d” provides that the department shall index and make available for public inspection certain information. Pursuant to this requirement the department shall:

1. Make available for public inspection all rules;
2. Make available for public inspection and index by subject all written statements of law or policy, or interpretations formulated, adopted, or used by the department in the discharge of its functions;
3. Make available for public inspection and index by name and subject all final orders, decisions and opinions.

Section 17A.3(1)“c” and “d” also excepts certain matters from the public inspection requirement:

Except as provided by constitution or statute, or in the use of discovery or in criminal cases, the department shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements issued by the department which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

Identifying details which would clearly warrant an invasion of personal privacy or trade secrets will be deleted from any final order, decision or opinion which is made available for public inspection upon a proper showing by the person requesting such deletion as provided in rule 701—7.9(17A).

Furthermore, the department shall not make available for public inspection or disclose information deemed confidential under Iowa Code sections 422.20 and 422.72.

Unless otherwise provided by statute, by rule or upon a showing of good cause by the person filing a document, all information contained in any petition or pleading shall be made available for public inspection.

All information accorded public inspection treatment shall be made available for inspection in the office of the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306, during established office hours.

This rule is intended to implement Iowa Code chapter 17A.

[ARC 9875B, IAB 11/30/11, effective 1/4/12; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—6.3(17A) Examination of records.** Situations may occur that give rise to the need for state officials, other officers, agents or employees of the state, or other persons based on a court subpoena to review tax returns or information belonging to the department in order to fulfill duties and responsibilities or to assist in an investigation. However, there are guidelines that govern such reviews, which are as follows:

**6.3(1)** Upon the express written approval of the director of revenue or administrator of the compliance division, officers or employees of the state of Iowa may examine state tax returns and information belonging to the department to the extent required as part of their official duties and responsibilities. Written approval will be granted in those situations where the officers or employees of the state of Iowa have (1) statutory authority to obtain information from the department of revenue and

(2) the information obtained is used for tax administration purposes. Where information is obtained from the department of revenue on a regular basis, the director of revenue may enter into a formal agreement with the state agency or state official who is requesting the information. The agreement will cover the conditions and procedures under which specific information will be released. The following persons do not need written approval from the director of revenue or the administrator of the compliance division to examine state information and returns:

1. Assistant attorneys general assigned to the department of revenue.
2. Local officials acting as representatives of the state in connection with the collection of taxes or in connection with legal proceedings relating to the enforcement of tax laws.
3. The child support recovery unit of the department of human services and other state agencies and subdivisions of the state that are set forth in Iowa Code section 422.17 as amended by 1999 Iowa Acts, chapter 152, section 1, to secure a taxpayer's name and address per the terms of an interagency agreement. (Also see Iowa Code section 252B.9)
4. Workforce development department per the terms of an interagency agreement.
5. The legislative services agency regarding sample individual income tax information to be used for statistical purposes. (Also see Iowa Code section 422.72(1).)
6. The auditor of state, to the extent that the information is necessary to complete the annual audit of the department as required by Iowa Code section 11.2. (Also see Iowa Code section 422.72(1).)

Tax information and returns will not be released to officers and employees of the state who do not meet the requirements set forth above. (See Letter Opinions, November 25, 1981, Richards to Bair, Director of Revenue, and March 4, 1982, Richards to Johnson, Auditor, and Bair, Director of Revenue.)

The director may disclose state tax information, including return information, to tax officials of another state or the United States government for tax administration purposes provided that a reciprocal agreement exists which has laws that are as strict as the laws of Iowa protecting the confidentiality of returns and information.

**6.3(2)** The director of revenue must provide state tax returns and return information in response to a subpoena issued by the court based on Iowa R. Crim. P. 2.5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of Iowa Code chapter 124, "Controlled Substances," or 706B, "Money Laundering." Affidavits accompanying the subpoenas and the information provided by the director of revenue must remain a confidential record and may only be disseminated to a prosecutor, peace officer involved in the investigation, or to the taxpayer who filed the information. In addition, the court in connection with the filing of criminal charges or institution of a forfeiture action may also receive such confidential information.

A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this rule in any manner prohibited by this rule commits a serious misdemeanor.

This rule is intended to implement Iowa Code sections 252B.9, 421.18, 421.19, 422.20, 422.72, and 452A.63.

**701—6.4(17A) Copies of proposed rules.** A trade or occupational association which has registered its name and address with the department of revenue may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Administrator, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. In the written notification, the association must designate, by reference to rule 701—7.1(421,17A), the type of proposed rules and the number of copies of each rule it wishes to receive. If the association wishes to receive copies of proposed rules not enumerated in rule 701—7.1(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of such rules. A charge of 20 cents per single-sided page shall be charged to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

This rule does not prevent an association which has registered with the department in accordance with this rule from changing its designation of types of proposed rules or number of copies of proposed rules which the association desires to receive. If an association makes such changed designation, it must do so by written notification to the Administrator, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 17A.4.  
[ARC 9875B, IAB 11/30/11, effective 1/4/12; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—6.5(17A) Regulatory analysis procedures.** Any small business as defined in Iowa Code section 17A.4A or organization of small businesses which has registered its name and address with the department of revenue shall receive by mail a copy or copies of any proposed rule which may have an impact on small business. Registration of the business's or organization's name and address with the department is accomplished by written notification to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. In the written notification, the business or organization must state that it wishes to receive copies of rules which may have an impact on small business, the number of copies of each rule it wishes to receive, and must also designate, by reference to rule 701—7.1(421,17A), the types of proposed rules it wishes to receive. If the small business or organization of small businesses wishes to receive copies of proposed rules not enumerated in rule 701—7.1(421,17A), it may make a blanket written request at the time of registration or at any time prior to the adoption of the rules. A charge of 20 cents per single-sided page shall be imposed to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds 20 cents for a single-sided page, it will be billed accordingly.

The administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons may request issuance of a regulatory analysis by writing to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50319. The request shall contain the following information: the name of the persons qualified as a small business and the name of the small business or the name of the organization as stated in its request for registration and an address; if a registered organization is requesting the analysis, a statement that the registered organization represents at least 25 persons; the proposed rule or portion of the proposed rule for which a regulatory analysis is requested; the factual situation which gives rise to the business's or organization's difficulties with the proposed rule; any of the methods for reducing the impact of the proposed rule on small business contained in Iowa Code section 17A.4A which may be particularly applicable to the circumstances; the name, address and telephone number of any person or persons knowledgeable regarding the difficulties which the proposed rule poses for small business and other information as the business or organization may deem relevant.

This rule is intended to implement Iowa Code section 17A.4A.  
[ARC 9875B, IAB 11/30/11, effective 1/4/12; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—6.6(422) Retention of records and returns by the department.** The director may destroy any records, returns, reports or communications of a taxpayer after they have been in the custody of the department for three years, or at such later time when the statute of limitations for audit of the returns or reports has expired. The director may destroy any records, returns, reports or communications of a taxpayer before they have been in the custody of the department for three years provided that the amount of tax and penalty due has been finally determined.

This rule is intended to implement Iowa Code section 422.68.

**701—6.7(68B) Consent to sell.** In addition to being subject to any other restrictions in outside employment, self-employment or related activities imposed by law, an official of the department of revenue may only sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the authority of the department of revenue when granted permission subsequent to completion and approval of an Iowa department of revenue application to engage in outside employment. The application to engage in outside employment must be approved by the official's

immediate supervisor, division administrator, and the administration division administrator. Approval to sell may only be granted when conditions listed in Iowa Code section 68B.4 are met.

This rule is intended to implement Iowa Code section 68B.4.

**701—6.8(421) Tax return extension in disaster areas.** If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period of time for any affected taxpayer whose principal residence or business is located in the covered area if the director determines it necessary for the efficient administration of the tax laws of this state. The director will notify the public of any possible extensions of tax filings as well as possible suspensions of penalty and interest. Notification will be made through different means available to the director including, but not limited to, press releases, media information, and the department's Web site. Persons eligible for extension shall notify the director that they qualify and shall include a notation of the reason for the extension request on the tax return.

This rule is intended to implement 2008 Iowa Acts, Senate File 2400.

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CHAPTER 7  
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF REVENUE  
[Prior to 12/17/86, Revenue Department[730]]

**701—7.1(421,17A) Applicability and scope of rules.** These rules pertain to practice and procedure and are designed to implement the requirements of the Act and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure and conduct of the informal proceedings, contested case proceedings, licensing, rule making, and declaratory orders involving taxation and other areas within the department's jurisdiction, which includes the following:

1. Sales and use tax—Iowa Code chapter 423;
2. Individual and fiduciary income tax—Iowa Code sections 422.4 to 422.31 and 422.110 to 422.112;
3. Franchise tax—Iowa Code sections 422.60 to 422.66;
4. Corporate income tax—Iowa Code sections 422.32 to 422.41 and 422.110 to 422.112;
5. Withholding tax—Iowa Code sections 422.16 and 422.17;
6. Estimated tax—Iowa Code sections 422.16, 422.17 and 422.85 to 422.92;
7. Motor fuel tax—Iowa Code chapter 452A;
8. Property tax—Iowa Code chapters 421, 425 to 428A and 433 to 441;
9. Cigarette and tobacco tax—Iowa Code chapters 421B and 453A;
10. Inheritance tax, generation skipping transfer tax, qualified use inheritance tax and estate tax—Iowa Code chapters 450, 450A, 450B and 451;
11. Local option taxes—Iowa Code chapter 423B;
12. Hotel and motel tax—Iowa Code chapter 423A;
13. Drug excise tax—Iowa Code chapter 453B;
14. Automobile rental excise tax—Iowa Code chapter 423C;
15. Environmental protection charge—Iowa Code chapter 424;
16. Replacement taxes—Iowa Code chapter 437A;
17. Statewide property tax—Iowa Code chapter 437A;
18. Equipment tax—Iowa Code chapter 423D;
19. Other taxes and activities as may be assigned to the department from time to time; and
20. The taxpayer's bill of rights—Iowa Code section 421.60.

As the purpose of these rules is to facilitate business and advance justice, any rule contained herein, pursuant to statutory authority, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.2(421,17A) Definitions.** These definitions apply to this chapter, unless the text otherwise states to the contrary:

*“Act”* means the Iowa administrative procedure Act.

*“Affiliate or subsidiary of an entity dominant in its field of operation”* means an entity which is at least 20 percent owned by an entity that is dominant in its field of operation, or by a partner, officer, director, majority stockholder or the equivalent, of an entity dominant in that field of operation.

*“Agency”* means each board, commission, department, officer, or other administrative office or unit of the state.

*“Clerk of the hearings section”* means the clerk of the hearings section of the department.

*“Contested case”* means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. This term also includes any matter defined as a no factual dispute contested case as provided in Iowa Code section 17A.10A.

*“Declaratory order”* means an order issued pursuant to Iowa Code section 17A.9.

*“Department”* means the Iowa department of revenue.

*“Department of inspections and appeals”* means the state department created by Iowa Code chapter 10A.

*“Director”* means the director of the department or the director’s authorized representative.

*“Division of administrative hearings”* means the division of the department of inspections and appeals responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

*“Dominant in its field of operation”* means having more than 20 full-time equivalent positions and more than \$1 million in annual gross revenues.

*“Entity”* means any taxpayer other than an individual or sole proprietorship.

*“Intervene”* means to file with the department a petition requesting that the petitioner be allowed to intervene in the proceedings for a declaratory order currently under the department’s consideration.

*“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.

*“Last-known address”* does not necessarily mean the taxpayer’s actual address but instead means the last address that the taxpayer makes known to the department by tax type. Thus, for instance, receipt by the department of a taxpayer’s change of address from a third person not authorized to act on behalf of the taxpayer (e.g., an employer who had filed a Form W-2 showing a new taxpayer address) is not notice to the department of a change of address of the taxpayer. However, the filing by the taxpayer of a tax return for a year subsequent to the year for which a notice is required would be notification to the department of a change of address, provided a reasonable amount of time is allowed to process such information and transfer it to the department’s central computer system. Taxpayers should be aware of their need to update their address with the department in order to receive refunds of tax and notices of assessments and denial of a claim for refund. When such a notice is sent to a “taxpayer’s last-known address,” the notice is legally effective even if the taxpayer never receives it.

*“License”* means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

*“Licensing”* means the department process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

*“Motion”* has the same meaning as the term is defined in Iowa R. Civ. P. 1.431.

*“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, including intervenors.

*“Person”* means any individual; estate; trust; fiduciary; partnership, including limited liability partnership; corporation, including limited liability corporation; association; governmental subdivision; or public or private organization of any character or any other person covered by the Act other than an agency.

*“Petition”* means application for declaratory order, request to intervene in a declaratory order under consideration, application for initiation of proceedings to adopt, amend or repeal a rule or document filed in licensing.

*“Pleadings”* means protest, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

*“Presiding officer”* means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to Iowa Code section 10A.801. In cases in which the department is not a party, at the director’s discretion, the presiding officer may be the director or the director’s designee. The presiding officer of an administrative appeal is the director of the department.

*“Proceeding”* means informal, formal and contested case proceedings.

*“Proposed decision”* means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside.

*“Protester”* means any person entitled to file a protest which may culminate in a contested case proceeding.

*“Provision of law”* means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or rule of the department.

*“Review unit”* means the unit composed of department employees designated by the director and of the attorney general’s staff who have been assigned to review protests filed by taxpayers.

*“Rule”* means a department statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of the department. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include the excluded items set forth in Iowa Code section 17A.2(11).

*“Small business”* means any entity including, but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. A small business is not an affiliate of an entity dominant in its field of operation. A small business has either 20 or fewer full-time equivalent positions or less than \$1 million in annual gross revenues in the preceding fiscal year.

*“Taxpayer interview”* means any in-person contact between an employee of the department and a taxpayer or a taxpayer’s representative which has been initiated by a department employee.

*“Taxpayer’s representative”* or *“authorized taxpayer’s representative”* means an individual authorized to practice before the department under rule 701—7.6(17A); an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14, or a tax return filed under Iowa Code chapter 450, “Inheritance Tax,” chapter 450A, “Generation Skipping Transfer Tax,” or chapter 451, “Iowa Estate Tax”; or for proceedings before the department, any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

Unless otherwise specifically stated, the terms used in these rules promulgated by the department shall have the meanings defined by the Act.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.3(17A) Business hours.** The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall be open between the hours of 8 a.m. and 4:30 p.m. each weekday, except Saturdays, Sundays and legal holidays as prescribed in Iowa Code section 4.1(34), for the purpose of receiving protests, pleadings, petitions, motions, or requests for public information or copies of official documents or for the opportunity to inspect public records.

**7.3(1)** All documents or papers required to be filed with the department by these rules shall be filed with the designated clerk of the hearings section in the principal office of the department in the Hoover State Office Building, Des Moines, Iowa 50319. Requests for public information or copies of official documents or for the opportunity to inspect public records shall be made in the director’s office at the department’s principal office.

**7.3(2)** All documents or papers filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer shall be filed with the Department of Inspections and Appeals, Administrative Hearings Division, Third Floor, Wallace State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.4(17A) Computation of time, filing of documents.** 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).

**7.4(1)** All documents or papers required to be filed with the department shall be considered as timely filed if they are either received by the department's principal office or are postmarked for delivery to the department's principal office within time limits as prescribed by law or by rules or orders of the department.

**7.4(2)** In all cases where the time for the filing of a protest or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.5(17A) Form and style of papers.** All pleadings, petitions, briefs and motions or other documents filed with the department shall be typewritten, shall have a proper caption, and shall have a signature and copies as herein provided or as specified in some other rule.

**7.5(1)** Papers shall be typed on only one side of plain white paper. Pleadings, petitions, motions, orders and any other papers allowed or required to be filed by these rules may be on any size paper. Citations should be underscored.

**7.5(2)** The proper caption shall be placed in full upon the first paper filed.

**7.5(3)** The signature of the petitioner, party, or authorized representative shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual's and not a firm's name except that the signature of a corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the party or the party's representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief, every statement contained in the document is true and no such statement is misleading.

*a.* A taxpayer or the taxpayer's representative using e-mail or other electronic means to submit an income tax return, a sales tax or use tax return, a return for any other tax administered by the department, an application for a sales tax permit or other permit, a deposit form for remitting withholding tax or other taxes administered by the department, or any other document to the department may use an electronic signature or a signature designated by the department in lieu of a handwritten signature. To the extent that a taxpayer or the taxpayer's representative submits to the department a tax return, deposit document, application or other document by e-mail or other electronic means with an electronic signature or signature designated by the department, the taxpayer should include in the record of the document the taxpayer's federal identification number so that the taxpayer's identity is established. For purposes of this rule, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a tax return, deposit document, or other document filed with the department and executed or adopted by a person with the intent to sign the return, deposit document, or other document filed with the department. For purposes of this rule, "signature designated by the department" means a symbol or other information that is provided by the department to the taxpayer or the taxpayer's representative and is to serve instead of the handwritten signature of the taxpayer.

*b.* In a situation where the taxpayer or the taxpayer's representative has submitted a return or other document to the department by e-mail, the taxpayer should include the taxpayer's e-mail address in the record of the document. However, notwithstanding the above information, a taxpayer may not submit a tax return or other document to the department with an electronic signature when a handwritten signature is required with the return or document by federal or state law.

**7.5(4)** Every pleading (other than protest) or motion or brief shall bear proof of service upon the opposing party as provided by the Iowa Rules of Civil Procedure.

**7.5(5)** Except as otherwise provided in these rules or ordered by the department, an original copy only of every pleading, brief, motion or petition shall be filed.

**7.5(6)** All copies shall be clear and legible but may be on any weight of paper.

**7.5(7)** Upon motion of an opposing party or on its own motion, the department may, in its discretion, if a person or party has failed to comply with this rule, require such person or party to follow the

provisions of this rule and may point out the defects and details needed to comply with the rule prior to the filing of the rule.

This rule is intended to implement Iowa Code chapters 17A and 554D and section 421.17.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.6(17A) Persons authorized to represent themselves or others.** Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

**7.6(1)** The right to represent one's self or others in connection with any proceeding before the department or administrative hearings division shall be limited to the following classes of persons:

- a. Taxpayers who are natural persons representing themselves;
- b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;
- c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Iowa Ct. R. 31.14;
- d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;
- e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of paragraph 7.6(1) "c" above;
- f. Partners representing their partnership;
- g. Fiduciaries;
- h. Government officials authorized by law; and
- i. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422.

**7.6(2)** No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

**7.6(3)** Any person appearing in any proceeding involving the department, regardless of whether the department is a party, must have on file with the department a valid Iowa power of attorney.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.7(17A) Resolution of tax liability.** Unless a proper protest has been filed as provided hereinafter, persons interested in any tax liability, refund claim, licensing or any other tax matters shall discuss the resolution of such matters with appropriate personnel.

In the event that a proper protest has been filed as provided hereinafter, the appropriate department personnel, when authorized by the review unit, shall have the authority to discuss the resolution of any matter in the protest either with the protester or the protester's representative. The appropriate personnel shall report their activities in this regard to the review unit, and the unit shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve a protest.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.8(17A) Protest.** Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 10472, Des Moines, Iowa 50306, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed

article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

**7.8(1)** The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless, on the director's own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised. The review unit created within the department by the director to review protests as provided in rule 701—7.11(17A) may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.11(2) for dismissals.

**7.8(2)** If the department has not granted or denied a filed refund claim within six months of the filing of the claim, the refund claimant may file a protest. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

**7.8(3)** Notwithstanding the above, the taxpayer who fails to timely protest an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes which are not timely protested, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct.630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D. Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such protest filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file a protest as authorized by this rule.

**7.8(4)** All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept.

EXAMPLE A. As a responsible party, X is assessed withholding income taxes, penalty and interest on eight employees. X fails to timely protest the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty and interest attributable to one employee for one month and file a refund claim within the time period provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B. Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely protest the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

**7.8(5)** The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest.

**7.8(6)** The protest shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE  
 HOOVER STATE OFFICE BUILDING  
 DES MOINES, IOWA

---

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	PROTEST
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

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**7.8(7)** The protest shall substantially state in separate numbered paragraphs the following:

- a. Proper allegations showing:
  - (1) Date of assessment;
  - (2) Date of refund denial;
  - (3) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
  - (4) Whether the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
  - (5) The assessment, refund claim, and refund denial, copies of which shall be attached;
  - (6) Other items that the protester wishes to bring to the attention of the department; and
  - (7) A request for attorney fees, if applicable.
- b. The type of tax, the taxable period or periods involved and the amount in controversy.
- c. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to any particular statute or statutes and any rule or rules involved, if known.
- e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
- f. Any other matters deemed relevant and not covered in the above paragraphs.
- g. The desire of the protester to waive informal or contested case proceedings if waiver is desired. Unless the protester so indicates a waiver, informal procedures will be initiated.
- h. A statement setting forth the relief sought by the protester.
- i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative. A copy of the power of attorney for the protester's representative shall be attached.

**7.8(8)** An original and two copies of the protest shall be filed with the clerk of the hearings section. Upon receipt of the protest, the clerk of the hearings section shall register receipt of the protest, docket the protest, and assign a number to the case. The assigned number shall be placed on all subsequent pleadings filed in the case.

**7.8(9)** The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department may request that the protester amend the protest for purposes of clarification.

**7.8(10)** Upon the filing of an answer or if a demand for contested case is made by the protester, the clerk of the hearings section will transfer the protest file to the division of administrative hearings within 30 days of the date of the filing of the answer or the demand for contested case, unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.17(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

**7.8(11)** Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license.

- a. A person who has had an application for renewal of vehicle registration denied, has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license

suspended may file a protest with the clerk of the hearings section if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

*b.* The issues raised in a protest by the person, which are limited to a mistake of fact, may include but are not limited to:

- (1) The person has the same name as the obligor but is not the correct obligor;
- (2) The amount in question has been paid; or
- (3) The person has made arrangements with the department to pay the amount.

This rule is intended to implement Iowa Code chapter 17A.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

#### **701—7.9(17A) Identifying details.**

**7.9(1)** Any person may file a motion to delete identifying details concerning the person from any document relating to any proceeding as defined in rule 701—7.2(421,17A) prior to disclosure to members of the public. Such a motion must be filed with the clerk of the hearings section if the motion is filed prior to the commencement of a contested case, which is before the notice for hearing is issued. If the motion is filed during a contested case proceeding pending before an administrative law judge and before the administrative law judge has entered a proposed decision on the case or has entered a closing order, the motion must be filed with and ruled upon by the administrative law judge. Otherwise, the motion must be filed with the clerk of the hearings section and ruled upon by the director. The motion shall be filed simultaneously with the presentation of the privacy or trade secret information under circumstances whereby the information may be disclosed to the public and before the issuance of any opinion, order or decision.

**7.9(2)** If the motion concerns information which is not a part of a contested case, the motion shall be in the form of a request to delete identifying details; if part of a contested case, the motion shall be in the form of a motion to delete identifying details. All motions to delete identifying details shall conform to subrule 7.17(5).

*a.* The motion shall contain the following:

(1) The name of the person requesting deletion and the docket number of the proceeding, if applicable;

(2) The legal basis for the motion for deletion, which is either that release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret. A corporation may not claim an unwarranted invasion of privacy;

(3) A precise description of the document, report, or other material in the possession of the department from which the deletion is sought and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, which is that release of the material sought to be deleted is a clearly unwarranted invasion of privacy or the material is a trade secret and the material serves no public purpose.

*b.* An affidavit in support of deletion must accompany each motion. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion or conclusionary allegations.

*c.* All affidavits shall contain a general and truthful statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

*d.* The burden of showing that deletion is justified shall be on the movant. The burden is not carried by mere conclusionary statements or allegations, for example, that the release of the material would be a clearly unwarranted invasion of personal privacy or that the material is a trade secret.

*e.* That the matter sought to be deleted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information shall not be grounds for deletion (1992 Op. IA Att’y Gen. 1).

*f.* The ruling on the motion shall be strictly limited to the facts and legal bases presented by the movant, and the ruling shall not be based upon any facts or legal bases not presented by the movant.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.10(17A) Docket.** The clerk of the hearings section shall maintain a docket of all proceedings, and each of the proceedings shall be assigned a number. Every matter coming within the purview of these rules shall be assigned a docket number which shall be the official number for the purposes of identification. Upon receipt of a protest, a petition for declaratory order or a petition to initiate rule-making proceedings, the proceeding will be docketed and assigned a number, and the parties notified thereof. The number shall be placed by the parties on all papers thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign a docket number to the case and, in that event, the docket number shall be placed by the parties on all papers thereafter filed in the proceeding.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.11(17A) Informal procedures and dismissals of protests.**

**7.11(1) Informal procedures.** Persons are encouraged to utilize the informal procedures provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

*a.* Review unit. A review unit is created within the department and, subject to the control of the director, the unit will:

- (1) Review and evaluate the validity of all protests made by taxpayers from the department action.
- (2) Determine the correct amount of tax owing or refund due.
- (3) Determine the best method of resolving the dispute between the protester and the department.
- (4) Take further action regarding the protest, including any additions and deletions to the audit, as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

(5) Determine whether the protest complies with rule 701—7.8(17A) and request any amendments to the protest or additional information.

*b.* The review unit may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the review unit may request that the protester and the protester's representative, if any, attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made. The review unit may request clarification of the issues from the protester or further information from the protester or third persons.

*c.* Findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

*d.* Nothing herein will prevent the review unit and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

*e.* Settlements. If a settlement is reached during informal procedures, the clerk of the hearings section must be notified. A closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and served upon all parties.

**7.11(2) Dismissal of protests.**

*a.* Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the director or the director's designee. If the protest is so dismissed, the protester may file an application for reinstatement of the protest for good cause as provided in paragraph 7.11(2) "c." Such application must be filed within

30 days of the date of the dismissal notice. Thereafter, the procedure in paragraph 7.11(2) “c” should be followed. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the director or the director’s designee to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of the protester to file a protest in the format required by rule 701—7.8(17A) may be grounds for dismissal of the protest by the director or the director’s designee.

b. If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the clerk of the hearings section and serve a copy of the motion on the protester. The protester may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director’s designee shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has 10 days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the protester and the clerk of the hearings section. If no such notice is issued by the review unit within the 10-day period, the protest file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.14(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be dismissed. Thereafter, rule 701—7.17(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

c. If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the director or the director’s designee for good cause as interpreted by the Iowa supreme court in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993) if an application for reinstatement is filed with the clerk of the hearings section within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. When a written request for formal hearing is received, the protest file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.14(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be reinstated. Thereafter, rule 701—7.17(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 701—7.15(17A). Such a motion must be filed with the presiding officer.

e. Notwithstanding other provisions of this subrule, if the director finds that a protest is not timely filed, including a failure within a reasonable time to file a protest in proper form after notice to the protester by the hearings section, the director, without the filing of a motion to dismiss, may dismiss the protest and shall notify the protester that the protest has been dismissed. With respect to a protest so dismissed, thereafter the provisions of paragraph 7.11(2) “c” shall apply.

This rule is intended to implement Iowa Code section 17A.10.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.12(17A) Answer.** The department may, in lieu of findings, file an answer to the protest. When findings are issued, the department will file an answer within 30 days of receipt of written notification from the protester stating disagreement with the findings. The answer shall be filed with the clerk of the hearings section.

**7.12(1)** In the event that the protester does not so respond in writing to the findings issued on matters covered by paragraph 7.11(1) “c” within 30 days after being notified, the department may seek dismissal of the protest pursuant to subrule 7.11(2).

**7.12(2)** The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

**7.12(3)** Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the protest. An original copy only of the answer shall be filed with the clerk of the hearings section for the department and shall be signed by the department's counsel or representative.

**7.12(4)** The department shall forthwith serve a copy of the answer upon the representative of record or, if there is no representative of record, then upon the protester and shall file proof of service with the clerk of the hearings section at the time of filing of the answer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

**7.12(5)** The provisions of rule 701—7.12(17A) shall be considered as a part of the informal procedures since a contested case proceeding, at the time of the filing of the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the protester or the department.

**7.12(6)** Notwithstanding subrules 7.12(1) through 7.12(5), if a taxpayer makes a written demand for a contested case proceeding, as authorized by rule 701—7.14(17A), after a period of six months from the filing of a proper protest, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be suspended, if the protest involves an assessment, from the time that the department was required to answer until the date that the department files its answer and, if the protest involves a refund, interest shall accrue on the refund at double the rate from the time the department was required to answer until the date that the department files its answer.

**7.12(7)** The department's answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

**7.12(8)** The department's answer should set forth the basis for retention of the case by the director as provided in subrule 7.17(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings, unless the director determines on the director's own motion that the case should be retained by the director.

This rule is intended to implement Iowa Code chapter 17A and section 421.60.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.13(17A) Subpoenas.** Prior to the commencement of a contested case, the department shall have the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code section 17A.13.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.14(17A) Commencement of contested case proceedings.** A demand or request by the protester for the commencement of contested case proceedings must be in writing and filed with the clerk of the hearings section by electronic means, by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk of the hearings section, or by personal service on the office of the clerk of the hearings section during business hours. The demand or request is considered filed on the date of the postmark. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

**7.14(1)** At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of selecting a mutually agreeable hearing date, which date shall be the hearing date contained in the hearing notice. The notice shall be issued within one week after the mutually agreeable hearing date is selected.

**7.14(2)** Contested case proceedings will be commenced by the presiding officer by delivery of notice by ordinary mail directed to the parties after a demand or request is made (a) by the protester and the filing of the answer, if one is required, which demand or request may include a date to be set for the

hearing, or (b) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the protester. The notice will be given by the presiding officer.

**7.14(3)** The presiding officer may grant a continuance of the hearing. Any change in the date of the hearing shall be set by the presiding officer. Either party may apply to the presiding officer for a specific date for the hearing. The notice shall include:

- a.* A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;
- b.* A statement of the legal authority and jurisdiction under which the hearing is held;
- c.* A reference to the particular sections of the statutes and rules involved; and
- d.* A short and plain statement of the matters asserted, including the issues.

**7.14(4)** After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code section 17A.12.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.15(17A) Discovery.** The rules of the supreme court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested case proceedings. Disputes concerning discovery shall be resolved by the presiding officer. If necessary a hearing shall be scheduled, with reasonable notice to the parties, and, upon hearing, an appropriate order shall be issued by the presiding officer.

**7.15(1)** When the department relies on a witness in a contested case, whether or not the witness is a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, the department shall, on request, make such statements or reports available to a party for use on cross-examination unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable departmental records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

**7.15(2)** Evidence obtained in such discovery may be used in contested case proceedings if that evidence would otherwise be admissible in the contested case proceeding.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.16(17A) Prehearing conference.**

**7.16(1)** Upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

- a.* The possibility or desirability of waiving any provisions of the Act relating to contested case proceedings by written stipulation representing an informed mutual consent;
- b.* The necessity or desirability of setting a new date for hearing;
- c.* The simplification of issues;
- d.* The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation;
- e.* The possibility of agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of proof;
- f.* The procedure at the hearing;
- g.* Limiting the number of witnesses;
- h.* The names and identification of witnesses and the facts each party will attempt to prove at the hearing;

- i.* Conduct or schedule of discovery; and
- j.* Such other matters as may aid, expedite or simplify the disposition of the proceeding.

**7.16(2)** Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

**7.16(3)** When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed for the parties to present objections on the grounds that the order does not fully or correctly embody the agreements at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters the order includes, unless modified to prevent manifest injustice.

**7.16(4)** If either party to the contested case proceeding fails to appear at the prehearing conference, fails to request a continuance, or fails to submit evidence or arguments which the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.17(5).

This rule is intended to implement Iowa Code section 17A.12.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

### **701—7.17(17A) Contested case proceedings.**

**7.17(1) Evidentiary hearing.** Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public.

*a.* Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings shall be held at the location designated in the notice of evidentiary hearing. Generally, the location for evidentiary hearings in such cases will be at the principal office of the Department of Inspections and Appeals, Administrative Hearings Division, Third Floor, Wallace State Office Building, Des Moines, Iowa 50319.

*b.* If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50309. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

**7.17(2) Determination of presiding officer.** If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. If the department is not a party to the contested case retained by the director, the presiding officer may be the director or the director's designee. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director shall issue to the parties written notification of the determination which states the basis for retaining the case for evidentiary hearing.

*a.* The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule 701—7.12(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule 701—7.14(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

*b.* A protester may file a written objection to the director's determination to retain the case for evidentiary hearing and may request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk of the hearings section within 20 days of the notice issued by the director of the director's determination to retain the case. The director may retain the case only upon a finding that one or more of the following apply:

- (1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety and welfare;
- (2) A qualified administrative law judge is unavailable to hear the case within a reasonable time;
- (3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented;
- (4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues;
- (5) The case involves an issue or issues the resolution of which would create important precedent;
- (6) The case involves complex or extraordinary questions of law or fact;
- (7) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;
- (8) Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal;
- (9) The request was not timely filed;
- (10) The request is not consistent with a specified statute; and
- (11) Assignment of an administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule 7.17(8).

In making this determination, the director shall consider whether the assigned administrative law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

c. The director shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the protest file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing whether a qualified administrative law judge will be available.

d. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if the aforementioned criteria exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

e. The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa, unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

f. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

**7.17(3) Conduct of proceedings.**

a. A proceeding shall be conducted by a presiding officer who shall:

- (1) Open the record and receive appearances;
- (2) Administer oaths and issue subpoenas;
- (3) Enter the notice of hearing into the record;
- (4) Receive testimony and exhibits presented by the parties;
- (5) In the presiding officer's discretion, interrogate witnesses;
- (6) Rule on objections and motions;
- (7) Close the hearing; and
- (8) Issue an order containing findings of fact and conclusions of law.

b. 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 hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

c. Evidentiary proceedings shall be oral and open to the public and shall be recorded either by electronic means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order: (1) protester, (2) intervenor (if applicable), (3) department, (4) rebuttal by protester, (5) oral argument by parties (if necessary).

d. If the protester or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have such representatives appearing upon the parties' behalf. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to fairly present evidence, testimony, and arguments on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

e. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

f. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the presiding officer's own motion or upon the motion of the party who has appeared, adjourn the hearing, enter a default decision, or proceed with the hearing and make a decision on the merits in the absence of the party.

g. Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

h. A stipulation by the parties of the issues or a statement of the issues in the notice commencing the contested case cannot be changed by the presiding officer without the consent of the parties. The presiding officer shall not, on the presiding officer's own motion, change or modify the issues agreed upon by the parties. Notwithstanding the provisions of this paragraph, a party, within a reasonable time prior to the hearing, may request that a new issue be addressed in the proceedings, except that the request cannot be made after the parties have stipulated to the issues.

**7.17(4) Rules of evidence.** In evaluating evidence, the department's experience, technical competence, and specialized knowledge may be utilized.

a. *Oath.* All testimony presented before the presiding officer shall be given under oath, which the presiding officer has authority to administer.

b. *Production of evidence and testimony.* The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. *Subpoena.* When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number, and the last-known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case which the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. *Admissibility of evidence.*

(1) Evidence having probative value. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

Objections to evidentiary offers may be made at the hearing, and the presiding officer's ruling thereon shall be noted in the record.

(2) Evidence of a federal determination. Evidence of a federal determination such as a treasury department ruling, regulation or determination letter, a federal court decision or an Internal Revenue Service assessment relating to issues raised in the proceeding shall be admissible, and the protester shall be presumed to have conceded the accuracy of the federal determination unless the protester specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of the parties to be used in contested case proceedings. In the event the parties file a stipulation in the proceedings, the stipulation shall be binding on the parties and the presiding officer.

*e. Exhibits.*

(1) Identification of exhibits. Exhibits which are offered by protesters and attached to a stipulation or entered in evidence shall be numbered serially, i.e., 1, 2, 3, etc.; whereas, exhibits offered by the department shall be lettered serially, i.e., A, B, C, etc.; and those offered jointly shall be numbered and lettered, i.e., 1-A, 2-B, 3-C, etc.

(2) Disposition of exhibits. After an order has become final, either party desiring the return, at the party's expense, of any exhibit belonging to the party shall make application in writing to the clerk of the hearings section within 30 days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the clerk of the hearings section deems advisable.

*f. Official notice.* The presiding officer may take official notice of all facts of which judicial notice may be taken. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the presiding officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

*g. Evidence outside the record.* Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

*h. Presentation of evidence and testimony.* In any hearing, each party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. A person whose testimony has been submitted in written form shall, if available, also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for re-direct examination and re-cross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

*i. Offer of proof.* An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

**7.17(5) Motions.**

a. After commencement of contested case proceedings, appropriate motions may be filed by any party with the presiding officer when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

b. Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. Such motions shall be ruled on by the presiding officer. The presiding officer shall rule on the motion by issuing an order. A copy of the order containing the ruling on the motion shall be mailed to the parties and authorized representatives. A motion may be made orally during the course of a hearing; however, the presiding officer may request that the motion be reduced to writing and filed with the presiding officer.

c. To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

d. The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

e. Types of motions. Types of motions include, but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the unavailability of a party, a party's representative or a witness, the incompleteness of discovery, and the possibility of settlement of the case.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion to delete identifying details in the decision.

(5) Motion for default.

(6) Motion to vacate default.

f. Hearing on motions. Motions subsequent to the commencement of a contested case proceeding shall be determined by the presiding officer.

g. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may, after a reasonable time to complete discovery, after completion of discovery, or by agreement of the parties, move, with or without supporting affidavits, for a summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 45 days prior to the date the case is set for hearing, unless otherwise ordered by the presiding officer. Any party resisting the motion shall file within 30 days from the time of service of the motion a resistance; statement of disputed facts, if any; and memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The time fixed for hearing or normal submission on the motion shall be not less than 35 days after the filing of the motion, unless another time is ordered by the presiding officer. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits which support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading, but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually, and in good faith, controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.17(8).

**7.17(6) Briefs and oral argument.**

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the hearing, the parties should be prepared to make oral arguments as to the facts and law at the conclusion of the hearing if the presiding officer so directs.

b. An original copy only of all briefs shall be filed. Filed briefs shall conform to the requirements of rule 701—7.5(17A).

c. If the parties agree on a schedule for submission of briefs, the schedule shall be binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

**7.17(7) Defaults.** 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.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department 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 in subrule 7.17(8). 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, and such affidavit(s) must be attached to the motion.

c. 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.

d. 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.

*e.* “Good cause” for purposes of this rule shall have the same meaning as “good cause” as interpreted in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993).

*f.* 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 as provided in subrule 7.17(13).

*g.* 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.

*h.* A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues; but unless the defaulting party has appeared, the relief awarded cannot exceed the relief demanded.

*i.* 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 a stay.

**7.17(8) Orders.**

*a.* At the conclusion of the hearing, the presiding officer, in the presiding officer’s discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law, and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes.

*b.* The decision in a contested case is an order which shall be in writing or stated in the record. The order shall include findings of fact prepared by the person presiding at the hearing, unless the person is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record, and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of the protester, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award, unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

*c.* When a motion has been made to delete identifying details in an order on the basis of personal privacy or trade secrets, the justification for such deletion or refusal to delete shall be made by the moving party and shall appear in the order.

*d.* When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director within 30 days of the date of the order, or 10 days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 701—7.23(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director’s motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days,

whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues or selected issues presented at the hearing before the presiding officer or any issues of fact or law raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

*e.* Notwithstanding the provisions of this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date of issuance of the interlocutory decision or ruling to grant an appeal in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

*f.* In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

*g.* A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact, or may reverse or modify any conclusion of law that the director finds to be in error.

*h.* Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service, regular mail, certified mail, return receipt requested, or any other method to which the parties may agree. For example, a copy of the order can be submitted by electronic mail if both parties agree.

*i.* A cross-appeal may be taken within the 30-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.23(17A), the cross-appeal may be taken within the 10-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken.

*j.* Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding officer no longer has jurisdiction over the contested case. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

#### **7.17(9) Stays.**

*a.* During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file with the director an application for a stay. The application shall set forth in detail the reasons why the applicant is entitled to a stay and shall specifically address the following four factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter;
- (2) The extent to which the applicant will suffer irreparable injury if the stay is not granted;
- (3) The extent to which the granting of a stay to the applicant will substantially harm the other parties to the proceedings; and

(4) The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

*b.* The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

**7.17(10) Expedited cases—when applicable.** In case a protest is filed where the case is not of precedential value and the parties desire a prompt resolution of the dispute, the department and the protester may agree to have the case designated as an expedited case.

*a. Agreement.* The department and the protester shall execute an agreement to have the case treated as an expedited case. In this case, discovery is waived. The provisions of this agreement shall constitute a waiver of the rights set forth in Iowa Code chapter 17A for contested case proceedings. Within 30 days of written notice to the clerk of the hearings section sent by the parties stating that an agreement to expedite the case has been executed, the clerk of the hearings section must transfer the protest file to the division of administrative hearings.

*b. Finality of decision.* A decision entered in an expedited case proceeding shall not be reviewed by the director, state board of tax review, or any other court, and shall not be treated as a precedent for any other case.

*c. Discontinuance of proceedings.* Any time prior to a decision's being rendered, the taxpayer or the department may request that expedited case proceedings be discontinued if there are reasonable grounds to believe that the issues in dispute would be of precedential value.

*d. Procedure.* Upon return of an executed agreement for this procedure, the department shall within 14 days file its answer to the protest. The case shall be docketed for hearing as promptly as the presiding officer can reasonably hear the matter.

**7.17(11) Burden of proof.** The burden of proof with respect to assessments or denials of refunds in contested case proceedings is as follows:

*a.* The department must carry the burden of proof by clear and convincing evidence as to the issue of fraud with intent to evade tax.

*b.* The burden of proof is on the department for any tax periods for which the assessment was not made within six years after the return became due, excluding any extension of time for filing such return, except where the department's assessment is the result of the final disposition of a matter between the taxpayer and the Internal Revenue Service or where the taxpayer and the department signed a waiver of the statute of limitations to assess.

*c.* The burden of proof is on the department as to any new matter or affirmative defense raised by the department. "New matter" means an adjustment not set forth in the computation of the tax in the assessment or refund denial, as distinguished from a new reason for the assessment or refund denial. "Affirmative defense" is a defense resting on facts not necessary to support the taxpayer's case.

*d.* In all instances where the burden of proof is not expressly placed upon the department by this subrule, the burden of proof is upon the protester.

**7.17(12) Costs.**

*a.* A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded by the department reasonable litigation costs incurred subsequent to the issuance of the notice of assessment or refund denial that are based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer. No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

*b.* An award for reasonable litigation costs shall not exceed \$25,000 per case.

*c.* No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

*d.* For purposes of this subrule, “prevailing taxpayer” means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

*e.* The definition of “prevailing taxpayer” is taken from the definition of “prevailing party” in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service’s position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

*f.* The taxpayer has the burden of establishing the unreasonableness of the department’s position.

*g.* Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

*h.* If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

*i.* The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the protest, or the request for award will not be considered.

*j.* A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

*k.* At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

- (1) Whether the department’s position was substantially justified;
- (2) Whether the protester is the prevailing taxpayer;
- (3) The burden is upon the protester to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;
- (4) Whether alleged litigation costs are reasonable or necessary;
- (5) Whether the protester has met the protester’s burden of demonstrating all of these points.

**7.17(13) *Interlocutory appeals.***

*a.* Upon written request of a party or on the director’s own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of 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.

*b.* Interlocutory appeals do not apply to licensing.

**7.17(14) *Consolidation and severance.***

*a.* Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

*b.* Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

*c.* Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not, or should not be, fairly in dispute.

*d.* Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, or consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

*e.* Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under this rule governing contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 421.60 and 452A.68.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.18(17A) Interventions.** Interventions shall be governed by the Iowa rules of civil procedure.

This rule is intended to implement Iowa Code chapter 17A.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.19(17A) Record and transcript.**

**7.19(1)** The record in a contested case shall include:

- a.* All pleadings, motions and rulings;
- b.* All evidence received or considered and all other submissions;
- c.* A statement of all matters officially noticed;
- d.* All questions and offers of proof, objections, and rulings thereon;
- e.* All proposed findings and exceptions;
- f.* All orders of the presiding officer; and
- g.* The order of the director on appeal or review.

**7.19(2)** Oral hearings regarding proceedings on appeal to or considered on motion of the director which are recorded by electronic means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk of the hearings section who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review, if so requested and if no objection is made by any other party to the proceeding or the director. Upon request, the department shall provide a copy of the whole record 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.

**7.19(3)** 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.

**7.19(4)** Upon issuance of a proposed decision which leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes of any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.20(17A) Application for rehearing.** Any party to a contested case may file an application with the director for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. See subrule 7.17(8) as to when a proposed order becomes a final order. A copy of such application shall be timely mailed by the applicant to all parties in conformity with rule 701—7.21(17A). The director shall have 20 days

from the filing of the application for rehearing to grant or deny the application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing shall be deemed denied if not granted by the director within 20 days after filing.

**7.20(1)** The application for rehearing shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE  
HOOVER STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPLICATION FOR REHEARING
designate type of proceeding, e.g., income tax	*	Docket No. _____
refund claim)	*	
	*	

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**7.20(2)** The application for rehearing shall substantially state in separate numbered paragraphs the following:

- a.* Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;
- b.* Clear and concise statements of all relevant facts upon which the party relies;
- c.* Reference to any particular statute or statutes and any rule or rules involved;
- d.* The signature of the party or that of the party's representative, the address of the party or of the party's representative, and the telephone number of the party or the party's representative.

**7.20(3)** No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code section 17A.16.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.21(17A) Service.** All papers or documents required by this chapter to be filed with the department or the presiding officer and served upon the opposing party or other person shall be served by ordinary mail unless another rule specifically refers to another method. All notices required by this chapter to be served on parties or persons by the department or presiding officer shall be served by ordinary mail unless another rule specifically refers to another method.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.22(17A) Ex parte communications and disqualification.**

**7.22(1) Ex parte communication.** A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk of the hearings section. The clerk of the hearings section will transfer to the presiding officer the filed copy of the prohibited communication.

*a. 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 department 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 this rule, 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. 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.

b. *“Ex parte” communication defined.* Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

c. *How to avoid prohibited communications.* 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 communications shall be provided in compliance with this chapter and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

d. *Joint presiding officers.* 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.

e. *Advice to presiding officer.* Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the parties are not disqualified from participating in the making of a proposed or final decision under any provision of law and the parties comply with these rules.

f. *Procedural communications.* 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 and shall notify other parties when seeking to continue hearings or other deadlines.

g. *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. 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.

h. *Disclosure by presiding officer.* 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 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.

i. *Sanction.* 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, suspension, or revocation of the privilege to practice before the department or the administrative hearings division. Violation of ex parte communication prohibitions by department personnel or their representatives shall be reported to the clerk of the hearings section for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**7.22(2) Disqualification of a presiding officer.** Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. *Grounds for disqualification.* 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:

- (1) Has a personal bias or prejudice concerning a party or a representative of a party;
- (2) 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;
- (3) 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;
- (4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- (5) 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;
- (6) 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 to the case;
  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
- (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. “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 department 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 these rules.

c. Disqualification and the record. 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.

d. Motion asserting disqualification.

(1) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17. 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.

(2) 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 and seek a stay as provided under this chapter.

This rule is intended to implement Iowa Code section 17A.17.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

## **701—7.23(17A) Licenses.**

### **7.23(1)** *Denial of license; refusal to renew license.*

a. When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, a notice, as prescribed in rule 701—7.14(17A), shall be served by the department upon the licensee or applicant. Prior to the refusal or denial of a license, the department shall give 30 days’ written notice to the applicant or licensee in

which to appear at a hearing to show cause why a license should not be refused or denied. In addition to the requirements of rule 701—7.14(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the denial of the license or the refusal to renew a license. If the licensee so desires, the licensee may file a petition as provided in subrule 7.23(3) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.17(17A) governing contested case proceedings shall apply.

b. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department’s order or a later date fixed by order of the department or the reviewing court. See rule 481—100.2(99B) regarding gambling license applications.

**7.23(2) Revocation of license.**

a. The department shall not revoke, suspend, annul or withdraw any license until written notice is served by personal service or restricted certified mail pursuant to rule 701—7.14(17A) within the time prescribed by the applicable statute and the licensee whose license is to be revoked, suspended, annulled, or withdrawn, is given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.17(17A) compliance with all lawful requirements for the retention of the license. However, in the case of the revocation, suspension, annulment, or withdrawal of a sales or use tax permit, written notice will be served pursuant to rule 701—7.14(17A) only if the permit holder requests that this be done following notification, by ordinary mail, of the director’s intent to revoke, suspend, annul, or withdraw the permit. In addition to the requirements of rule 701—7.14(17A), the notice shall contain a statement of facts or conduct and the provisions of law which warrant the revocation, suspension, annulment, or withdrawal of the license. A licensee whose license may be revoked, suspended, annulled, or withdrawn, may file a petition as provided in subrule 7.23(3) with the clerk of the hearings section prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.17(17A) governing contested case proceedings shall apply.

b. Notwithstanding paragraph 7.23(2)“a,” if the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

**7.23(3) Petition.** When a person desires to file a petition as provided in subrules 7.23(1) and 7.23(2), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE  
HOOVER STATE OFFICE BUILDING  
DES MOINES, IOWA

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IN THE MATTER OF _____	*	PETITION
(state taxpayer’s name and address, and type of license)	*	Docket No. _____
	*	(filled in by Department)
	*	

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The petition shall substantially state in separate numbered paragraphs the following:

- a. The full name and address of the petitioner;
- b. Reference to the type of license and the relevant statutory authority;

- c. Clear, concise and complete statements of all relevant facts showing why petitioner’s license should not be revoked, refused, or denied;
- d. Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and
- e. The signature of the petitioner or petitioner’s representative, the address of petitioner and of the petitioner’s representative, and the telephone number of petitioner or petitioner’s representative.

This rule is intended to implement Iowa Code section 17A.18.  
 [ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.24(17A) Declaratory order—in general.** Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department. However, department personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory order, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory order on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters such as, for example, submittal of a request for a declaratory order or submittal of a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only, and the department is not bound to recognize the advice in the examination of the return, report or records.

**7.24(1) Petition for declaratory order.**

a. Any person may file with the Clerk of the Hearings Section, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319, a petition seeking a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department. A petition is deemed filed when it is received by the clerk of the hearings section. The clerk of the hearings section shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the clerk of the hearings section an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

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Petition by (Name of Petitioner)	*	PETITION FOR
for a Declaratory Order on (Cite	*	DECLARATORY ORDER
provisions of law involved).	*	Docket No. _____
	*	

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- b. The petition must provide the following information:
- (1) A clear and concise statement of all relevant facts on which the order is requested;
  - (2) A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law;
  - (3) The questions the petitioner wants answered, stated clearly and concisely;
  - (4) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;
  - (5) The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome;
  - (6) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
  - (7) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition;

- (8) Any request by petitioner for a meeting provided for by this rule; and
- (9) Whether the petitioner is presently under audit by the department.

c. The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

**7.24(2) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the clerk of the hearings section shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The clerk of the hearings section may also give notice to any other persons.

**7.24(3) Intervention.**

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order, shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. A petition for intervention shall be filed with the Clerk of the Hearings Section, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the clerk of the hearings section. The clerk of the hearings section will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

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Petition by (Name of Original	*	PETITION FOR
Petitioner) for a Declaratory Order	*	INTERVENTION
on (Cite provisions of law cited in	*	Docket No. _____
original Petition).	*	

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- d. The petition for intervention must provide the following information:
- (1) Facts supporting the intervenor’s standing and qualifications for intervention;
  - (2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;
  - (3) Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome;
  - (4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
  - (5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;
  - (6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding;
  - (7) Whether the intervenor is presently under audit by the department; and
  - (8) Consent of the intervenor to be bound by the declaratory order.

e. The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and of the intervenor’s representative and a statement indicating the person to whom communications should be directed.

f. For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. The petition for intervention must not correct facts that are in the petition for

declaratory order or raise any additional facts. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. Black's Law Dictionary, Centennial Edition, p. 1405, citing *Guidry v. Roberts*, 331 So. 44, 50 (La.App.). Based on Iowa case law, the department may refuse to entertain a petition from one whose rights will not be invaded or infringed. *Bowers v. Bailey*, 237 Iowa 295, 21 N.W.2d 773 (1946). The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Bonfield, "The Iowa Administrative Procedure Act, Background, Construction, Applicability and Public Access to Agency Law, The Rule-making Process," 60 Iowa Law Review 731, 805 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

*g.* An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

*h.* If a party seeks to have an issue determined by declaratory order, but the facts are different from those in a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for a declaratory order, and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

**7.24(4) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

**7.24(5) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Policy and Communications Division, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319.

**7.24(6) Service and filing of petitions and other papers.**

*a. When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

*b. Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

*c. Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided in rules 701—7.8(17A) and 701—7.21(17A).

**7.24(7) Department consideration.** Upon request by petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department to discuss the questions raised. The department may solicit comments or information from any person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

**7.24(8) Action on petition.**

*a.* Within 30 days after receipt of a petition for a declaratory order, the director shall take action on the petition.

*b.* The date of issuance of an order or of a refusal to issue an order is as defined in rule 701—7.2(17A).

**7.24(9) Refusal to issue order:**

a. The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- (1) The petition does not substantially comply with the required form;
- (2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;
- (3) The department does not have jurisdiction over the questions presented in the petition;
- (4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them;
- (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;
- (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;
- (7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;
- (8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;
- (9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner;
- (10) The petitioner requests the department to determine whether a statute is unconstitutional on its face; or
- (11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

c. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

**7.24(10) Contents of declaratory order; effective date.**

a. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

b. A declaratory order is effective on the date of issuance.

**7.24(11) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**7.24(12) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be withdrawn at the request of the petitioner.

**7.24(13) Prejudice or no consent.** The department will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

This rule is intended to implement Iowa Code section 17A.9.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.25(17A) Department procedure for rule making.**

**7.25(1)** The department hereby adopts and incorporates by reference the following Uniform Rules on Agency Procedure for Rule Making, which may be found on the general assembly's Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf> and which are printed in the first

volume of the Iowa Administrative Code, with the additions, changes, and deletions to those rules listed below:

X.2(17A) Advice on possible rules before notice of proposed rule adoption.

X.4(1) Notice of proposed rule making—contents.

X.4(3) Copies of notices. In addition to the text of this subrule, the department adds that the payment for the subscription and the subscription term is one year.

X.5(17A) Public participation. In addition to the text of this rule, the department adds that written submissions should be submitted to the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. Also, any requests for special requirements concerning accessibility are to be made to the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319; telephone (515)281-3204.

X.6(17A) Regulatory analysis. In addition to the text of this rule, the department adds that small businesses or organizations of small businesses may register on the department's small business impact list by making a written application to the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

X.7(17A,25B) Fiscal impact statement.

X.8(17A) Time and manner of rule adoption.

X.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

X.10(17A) Exemptions from public rule-making procedures. In addition to the text of this rule, the department adds that exempt categories are generally limited to rules for nonsubstantive changes to a rule, such as rules for correcting grammar, spelling or punctuation in an existing or proposed rule.

X.11(17A) Concise statement of reasons. In addition to the text of this rule, the department adds that a request for a concise statement of reasons for a rule must be submitted to the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

X.12(1) Contents, style, and form of rule—contents.

X.12(4) Contents, style, and form of rule—style and form.

X.14(17A) Filing of rules.

X.15(17A) Effectiveness of rules prior to publication.

X.16(17A) General statement of policy.

X.17(17A) Review by agency of rules.

**7.25(2)** The department hereby states that the following cited Uniform Rules on Agency Procedure for Rule Making are not adopted by the department:

X.1(17A) Applicability.

X.3(17A) Public rule-making docket.

X.4(2) Notice of proposed rule making—incorporation by reference.

X.12(2) Contents, style, and form of rule—incorporation by reference.

X.12(3) Contents, style, and form of rule—references to materials not published in full.

X.13(17A) Agency rule-making record.

This rule is intended to implement Iowa Code chapter 17A.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.26(17A) Public inquiries on rule making and the rule-making records.** The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. For additional information regarding criticism of rules, see rule 701—7.27(17A).

This rule is intended to implement Iowa Code section 17A.3.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.27(17A) Criticism of rules.** The Administrator of the Policy and Communications Division, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, is designated as the office where interested persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike of the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

This rule is intended to implement Iowa Code sections 17A.7 and 421.60.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.28(17A) Waiver or variance of certain department rules.** All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver or variance. See subrules 7.28(3) and 7.28(4).

**7.28(1) Definitions.** The following terms apply to the interpretation and application of this rule:

*“Discretionary rule”* or *“discretionary provisions in a rule”* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

*“Interpretive rules”* or *“interpretive provisions in rules”* means rules or provisions in rules which define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

*“Waiver or variance”* means an agency action which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

**7.28(2) Scope of rule.**

*a.* This rule creates generally applicable standards and a generally applicable process for granting individual waivers or variances from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers or variances. To the extent another more specific provision of law purports to govern the issuance of a waiver or variance from a particular rule, the more specific waiver or variance provision shall supersede this rule with respect to any waiver or variance from that rule.

*b.* The waiver or variance provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver or variance would be inconsistent with any applicable statute, constitutional provision or other provision of law.

**7.28(3) Applicability of this rule.**

*a.* This rule applies only to waiver or variance of those departmental rules that are within the exclusive rule-making authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver or variance rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

*b.* The application of this rule is strictly limited to petitions for waiver or variance filed outside of a contested case proceeding. Petitions for waiver or variance from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule 701—7.14(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

**7.28(4) Authority to grant a waiver or variance.** The director may not issue a waiver or variance under this rule unless:

- a. The legislature has delegated authority sufficient to justify the action; and
- b. The waiver or variance is consistent with statutes and other provisions of law. No waiver or variance from any mandatory requirement imposed by statute may be granted under this rule.

**7.28(5) Criteria for waiver or variance.** In response to a petition, the director may, in the director’s sole discretion, issue an order granting a waiver or variance from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver or variance is consistent with subrules 7.28(3) and 7.28(4) and if all of the following criteria are also met:

- a. The waiver or variance would not prejudice the substantial legal rights of any person;
- b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;
- c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver or variance is requested.

**7.28(6) Director’s discretion.** The final decision to grant or deny a waiver or variance shall be vested in the director. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

**7.28(7) Burden of persuasion.** The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver or variance based upon the criteria contained in subrule 7.28(5).

**7.28(8) Contents of petition.**

- a. A petition for waiver or variance must be in the following format:

IOWA DEPARTMENT OF REVENUE		
Name of Petitioner	*	PETITION FOR
Address of Petitioner	*	WAIVER
Type of Tax at Issue	*	Docket No. _____
	*	

- b. A petition for waiver or variance must contain all of the following, where applicable and known to the petitioner:

- (1) The name, address, telephone number, and case number or state identification number of the entity or person for whom a waiver or variance is being requested;
- (2) A description and citation of the specific rule or rule provisions from which a waiver or variance is being requested;
- (3) The specific waiver or variance requested, including a description of the precise scope and operative period for which the petitioner wants the waiver or variance to extend;
- (4) The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance;
- (5) A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver or variance, including audits, notices of assessment, refund claims, contested case hearings, or investigative reports relating to the activity within the last five years;
- (6) Any information known to the petitioner relating to the department’s treatment of similar cases;
- (7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver or variance;
- (8) The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver or variance;

(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance;

(10) Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver or variance;

(11) If the petitioner seeks to have identifying details deleted, which deletion is authorized by statute, such details must be listed with the statutory authority for the deletion; and

(12) Signature by the petitioner at the conclusion of the petition attesting to the accuracy and truthfulness of the information set forth in the petition.

**7.28(9) *Filing of petition.*** A petition for waiver or variance must be filed with the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319.

**7.28(10) *Additional information.*** Prior to issuing an order granting or denying a waiver or variance, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. The director may, on the director's own motion, or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

**7.28(11) *Notice of petition for waiver or variance.*** The petitioner shall provide, within 30 days of filing the petition for waiver or variance, a notice consisting of a concise summary of the contents of the petition for waiver or variance and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver or variance, or the parties' representatives. The petitioner must then file written notice with the clerk of the hearings section (address indicated above) attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

**7.28(12) *Ruling on a petition for waiver or variance.*** An order granting or denying a waiver or variance must conform to the following:

*a.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the narrow and precise scope and operative time period of a waiver or variance, if one is issued.

*b.* If a petition requested the deletion of identifying details, then the order must either redact the details prior to the placement of the order in the public record file referenced in subrule 7.28(17) or set forth the grounds for denying the deletion of identifying details as requested.

*c.* Conditions. The director may condition the grant of a waiver or variance on any conditions which the director deems to be reasonable and appropriate in order to protect the public health, safety and welfare.

**7.28(13) *Time period for waiver or variance; extension.*** Unless otherwise provided, an order granting a petition for waiver or variance will be effective for 12 months from the date the order granting the waiver or variance is issued. Renewal of a granted waiver or variance is not automatic. To renew the waiver or variance beyond the 12-month period, the petitioner must file a new petition requesting a waiver or variance. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or variance or extension of waiver or variance. Even if the order granting the waiver or variance was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver or variance. Granting the extension of the waiver or variance is at the director's sole discretion and must be based upon whether the factors set out in subrules 7.28(4) and 7.28(5) remain valid.

**7.28(14) *Time for ruling.*** The director shall grant or deny a petition for waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees in

writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

**7.28(15) *When deemed denied.*** Failure of the director to grant or deny a waiver or variance within the 120-day or the extended time period shall be deemed a denial of that petition.

**7.28(16) *Service of orders.*** 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.

**7.28(17) *Record keeping.*** The department is required to maintain a record of all petitions for waiver or variance and rulings granting or denying petitions for waiver or variance.

*a. Petitions for waiver or variance.* The department shall maintain a record of all petitions for waiver or variance available for public inspection. Such records will be indexed and filed and made available for public inspection at the office of the clerk of the hearings section at the address set forth in subrule 7.28(9).

*b. Report of orders granting or denying a waiver or variance.* All orders granting or denying a waiver or variance shall be summarized in a semiannual report to be drafted by the department and submitted to the administrative rules coordinator and the administrative rules review committee.

**7.28(18) *Cancellation of waiver or variance.*** A waiver or variance issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

*a.* The person who obtained the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver or variance; or

*b.* The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver or variance order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or

*c.* The person who obtained the waiver or variance has failed to comply with all of the conditions in the waiver or variance order.

**7.28(19) *Violations.*** A violation of a condition in a waiver or variance order shall be treated as a violation of the particular rule or rule provision for which the waiver or variance was granted. As a result, the recipient of a waiver or variance under this rule who violates a condition of the waiver or variance may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

**7.28(20) *Defense.*** After an order granting a waiver or variance is issued, the order shall constitute a defense, within the 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, unless subrules 7.28(18) and 7.28(19) are applicable.

**7.28(21) *Hearing and appeals.***

*a.* Appeals from a decision granting or denying a waiver or variance in a contested case proceeding shall be in accordance with the rules governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver or variance request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (see rule 701—7.23(17A)).

*b.* The provisions of Iowa Code sections 17A.10 to 17A.18A and rule 701—7.17(17A) regarding contested case proceedings shall apply to any petition for waiver or variance of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver or variance of a provision in a rule outside of a contested case proceeding will not be considered under the statutes or rule 701—7.17(17A). Instead, the director's decision on the petition for waiver or variance is considered to be "other agency action."

This rule is intended to implement Iowa Code section 17A.9A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.29(17A) Petition for rule making.****7.29(1) Form of petition.**

a. Any person or agency may file a petition for rule making at the Office of the Director, Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the director. The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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 DEPARTMENT OF REVENUE
 

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Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	RULE MAKING
repeal) of rules relating to (state	*	
subject matter).	*	

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b. The petition must provide the following information:

(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

(2) A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

(3) A brief summary of the petitioner's arguments in support of the action urged in the petition.

(4) A brief summary of any data supporting the action urged in the petition.

(5) The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the proposed action which is the subject of the petition.

(6) Any request by the petitioner for a meeting.

(7) Any other matters deemed relevant that are not covered by the above requirements.

**7.29(2) Form signed and dated.** The petition must be signed and dated by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number and, if requested, the e-mail address of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

**7.29(3) Denial by department.** The department may deny a petition because it does not substantially conform to the required form or because all the required information has not been provided.

**7.29(4) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

**7.29(5) Status of petition.** Inquiries concerning the status of a petition for rule making may be made to the Office of the Director, Department of Revenue, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319.

**7.29(6) Informal meeting.** If requested in the petition by the petitioner, the department may schedule an informal meeting between the petitioner and the department, or a member of the staff of the department, to discuss the petition. The department may request that the petitioner submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

**7.29(7) Action required.** Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either: (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial; or (b) grant the petition and notify the petitioner that the department has instituted rule-making proceedings on the subject of

the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner.

**7.29(8) *New petition.*** Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

This rule is intended to implement Iowa Code chapter 17A.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.30(9C,91C) Procedure for nonlocal business entity bond forfeitures.** Upon the failure of a transient merchant or an out-of-state contractor to pay any taxes payable, the amount of bond posted with the secretary of state by the transient merchant or out-of-state contractor necessary to pay the tax shall be forfeited. The following subrules shall govern the procedure for that forfeiture.

**7.30(1) *Definitions.***

a. “Nonlocal business entity” is either an out-of-state contractor or a transient merchant as those terms are defined in paragraphs 7.30(1) “b” and “f.”

b. “Out-of-state contractor” means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

c. “Taxes payable by a transient merchant” refers to all taxes administered by the department, and penalties, interest, and fees which the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

d. “Taxes payable by an out-of-state contractor” means tax, penalty, interest, and fees which the department, another state agency, or a subdivision of the state, has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

e. “Taxes payable” means any amount referred to in paragraphs 7.30(1) “c” and “d” above.

f. “Transient merchant” shall be defined, for the purposes of this rule, as that term is defined in Iowa Code section 9C.1.

**7.30(2) *Increases in existing bonds.*** If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities which will become due and owing under the contract in the future.

**7.30(3) *Responsibility for notification.*** Concerning taxes which are payable by an out-of-state contractor but which are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond which the out-of-state contractor must post.

**7.30(4) *Initial notification.*** After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to the nonlocal business entity and its surety of record, if any. Notice sent to the nonlocal business entity or its surety shall be sent to the last-known address as reflected in the records of the secretary of state. The notice sent to an out-of-state contractor shall also be mailed to the contractor’s registered agent for service of process, if any, within Iowa. This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity’s bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

**7.30(5) *Protest of bond forfeiture.*** The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for protests of other departmental action in rule 701—7.8(17A). The caption of the application shall be basically in the form set out in subrule 7.8(6) except the type of proceeding shall be designated as a bond forfeiture collection. The body of the

application for hearing must substantially resemble the body of the protest described in subrule 7.8(7). However, referring to paragraph 7.8(7)“a,” the nonlocal business entity shall state the date of the notice described in subrule 7.30(4). With regard to paragraph 7.8(7)“c,” in the case of a tax payable which is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department’s administrative law judge in the manner described in rule 701—7.8(17A). The docketing of an application for hearing shall follow the procedure for the docketing of a protest under that rule.

**7.30(6) *Prehearing, hearing and rehearing procedures.*** The following rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) to 701—7.7(17A), 701—7.9(17A) to 701—7.13(17A), and 701—7.15(17A) to 701—7.22(17A).

**7.30(7) *Sureties and state departments other than revenue.***

*a.* A surety shall not have standing to contest the amount of any tax payable.

*b.* If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule, and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

This rule is intended to implement Iowa Code sections 9C.4 and 91C.7.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.31(421) Abatement of unpaid tax.** For assessment notices issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines is erroneous, illegal, or excessive. The authority of the director to settle doubtful and disputed claims for taxes or tax refunds or tax liability of doubtful collectability is not covered by this rule.

**7.31(1) *Assessments qualifying for abatement.*** To be subject to an abatement, an assessment or a portion of an assessment for which abatement is sought must not have been paid and must have exceeded the amount due as provided by the Iowa Code and the administrative rules issued by the department interpreting the Iowa Code. If a taxpayer fails to timely appeal an assessment that is based on the Iowa Code or the department’s administrative rules interpreting the Iowa Code within the statutory period, then the taxpayer cannot request an abatement of the assessment or a portion thereof.

**7.31(2) *Procedures for requesting abatement.*** The taxpayer must make a written request to the director for abatement of that portion of the assessment that is alleged to be erroneous, illegal, or excessive. A request for abatement must contain:

*a.* The taxpayer’s name and address, social security number, federal identification number, or any permit number issued by the department;

*b.* A statement on the type of proceeding, e.g., individual income tax or request for abatement; and

*c.* The following information:

(1) The type of tax, the taxable period or periods involved, and the amount of tax that was excessive or erroneously or illegally assessed;

(2) Clear and concise statements of each and every error which the taxpayer alleges to have been committed by the director in the notice of assessment and which causes the assessment to be erroneous, illegal, or excessive. Each assignment of error must be separately numbered;

(3) Clear and concise statements of all relevant facts upon which the taxpayer relies (documents verifying the correct amount of tax liability must be attached to the request);

(4) Reference to any particular statute or statutes and any rule or rules involved, if known;

(5) The signature of the taxpayer or that of the taxpayer’s representative and the addresses of the taxpayer and the taxpayer’s representative;

(6) Description of records or documents which were not available or were not presented to department personnel prior to the filing of this request, if any (copies of any records or documents that were not previously presented to the department must be provided with the request); and

(7) Any other matters deemed relevant and not covered in the above subparagraphs.

This rule is intended to implement Iowa Code section 421.60.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.32(421) Time and place of taxpayer interviews.** The time and place of taxpayer interviews are to be fixed by an employee of the department, and employees of the department are to endeavor to schedule a time and place that are reasonable under the circumstances.

**7.32(1) *Time of taxpayer interviews.*** The department will schedule the day(s) for a taxpayer interview during a normally scheduled workday(s) of the department, during the department's normal business hours. The department will schedule taxpayer interviews throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives. The department will, however, work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of a taxpayer interview.

**7.32(2) *Type of taxpayer interview.***

*a.* The department will determine whether a taxpayer interview will be an office interview (i.e., an interview conducted at a department office) or a field interview (i.e., an interview conducted at the taxpayer's place of business or residence, or some other location that is not a department office) based on which form of interview will be more conducive to effective and efficient tax administration.

*b.* The department will grant a request to hold an office interview at a location other than a department office in case of a clear need, such as when it would be unreasonably difficult for the taxpayer to travel to a department office because of the taxpayer's advanced age or infirm physical condition or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a department office.

**7.32(3) *Place of taxpayer interview.*** The department will make an initial determination of the place for an interview, including the department regional office to which an interview will be assigned, based on the address shown on the return for the tax period to be examined. Requests by taxpayers to transfer the place of interview will be resolved on a case-by-case basis, using the criteria set forth in paragraph 7.32(3) "c."

*a. Office taxpayer interviews.* An office interview of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office interview of a taxpayer which is an entity generally is based on the location where the taxpayer entity's original books, records, and source documents are maintained.

*b. Field taxpayer interviews.* A field interview generally will take place at the location where the taxpayer's original books, records, and source documents pertinent to the interview are maintained. In the case of a sole proprietorship or taxpayer entity, this usually will be the taxpayer's principal place of business. If an interview is scheduled by the department at the taxpayer's place of business, which is a small business and the taxpayer represents to the department in writing that conducting the interview at the place of business would essentially require the business to close or would unduly disrupt business operations, the department upon verification will change the place of interview.

*c. Requests by taxpayers to change place of interview.* The department will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the department has set for an interview. In considering these requests, the department will take into account the following factors:

- (1) The location of the taxpayer's current residence;
- (2) The location of the taxpayer's current principal place of business;
- (3) The location where the taxpayer's books, records, and source documents are maintained;
- (4) The location at which the department can perform the interview most efficiently;
- (5) The department resources available at the location to which the taxpayer has requested a transfer; and
- (6) Other factors which indicate that conducting the interview at a particular location could pose undue inconvenience to the taxpayer.

*d. Granting of requests to change place of interview.* A request by a taxpayer to transfer the place of interview generally will be granted under the following circumstances:

(1) If the current residence of the taxpayer in the case of an individual or sole proprietorship, or the location where the taxpayer's books, records, and source documents are maintained, in the case of a taxpayer entity, is closer to a different department office than the office where the interview has been scheduled, the department normally will agree to transfer the interview to the closer department office.

(2) If a taxpayer does not reside at the residence where an interview has been scheduled, the department will agree to transfer the examination to the taxpayer's current residence.

(3) If, in the case of an individual, a sole proprietorship, or a taxpayer entity, the taxpayer's books, records, and source documents are maintained at a location other than the location where the interview has been scheduled, the department will agree to transfer the interview to the location where the taxpayer's books, records, and source documents are maintained.

(4) The location of the place of business of a taxpayer's representative generally will not be considered in determining the place for an interview. However, the department in its sole discretion may determine, based on the factors described in paragraph 7.32(3) "c," to transfer the place of interview to the representative's office.

(5) If any applicable period of limitations of assessment and collection provided in the Iowa Code will expire within 13 months from the date of a taxpayer's request to transfer the place of interview, the department may require, as a condition to the transfer, that the taxpayer agree in writing to extend the limitations period up to one year.

(6) The department is not required to transfer an interview to an office that does not have adequate resources to conduct the interview.

(7) Notwithstanding any other provision of this rule, employees of the department may decline to conduct an interview at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the department may transfer an interview to a department office and take any other steps reasonably necessary to protect its employees.

(8) Nothing in this rule shall be interpreted as precluding the department from initiating the transfer of an interview if the transfer would promote the effective and efficient conduct of the interview. Should a taxpayer request that such a transfer not be made, the department will consider the request according to the principles and criteria set forth in paragraph 7.32(3) "c."

(9) Regardless of where an examination takes place, the department may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The department generally will visit for these purposes on a normal workday of the department during the department's normal business hours.

**7.32(4) Audio recordings of taxpayer interviews.**

*a.* A taxpayer is permitted, upon advance notice to the department, to make an audio recording of any interview of the taxpayer by the department relating to the determination or collection of any tax. The recording of the interview is at the taxpayer's own expense and must be with the taxpayer's own equipment.

*b.* Requests by taxpayers to make audio recordings must be addressed to the department employee who is conducting the interview and must be received by no later than ten calendar days before the interview. If ten calendar days' advance notice is not given, the department may, in its discretion, conduct the interview as scheduled or set a new date.

*c.* The department employee conducting the interview will approve the request to record the interview if:

- (1) The taxpayer (or representative) supplies the recording equipment;
- (2) The department may produce its own recording of the proceedings;
- (3) The recording takes place in a suitable location; and
- (4) All participants in the proceedings other than department personnel consent to the making of the audio recording, and all participants identify themselves and their role in the proceedings.

d. A department employee is also authorized to record any taxpayer interview, if the taxpayer receives prior notice of the recording and is provided with a transcript or a copy of the recording upon the taxpayer's request.

e. Requests by taxpayers (or their representatives) for a copy or transcript of an audio recording produced by the department must be addressed to the employee conducting the interview and must be received by the department no later than 30 calendar days after the date of the recording. The taxpayer must pay the costs of duplication or transcription.

f. At the beginning of the recording of an interview, the department employee conducting the interview must state the employee's name, the date, the time, the place, and the purpose of the interview. At the end of the interview, the department employee will state that the interview has been completed and that the recording has ended.

g. When written records are presented or discussed during the interview being recorded, they must be described in sufficient detail to make the audio recording a meaningful record when matched with the other documentation contained in the case file.

This rule is intended to implement Iowa Code section 421.60.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

### **701—7.33(421) Mailing to the last-known address.**

**7.33(1)** If the department fails to mail a notice of assessment to the taxpayer's last-known address or fails to personally deliver the notice to the taxpayer, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

a. In addition, if the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer's last-known address or fails to personally deliver the notice to a taxpayer and, if applicable, to the taxpayer's authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

b. Collection activities, except when a jeopardy situation exists, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

**7.33(2)** The department will make the determination of the taxpayer's last-known address on a tax-type-by-tax-type basis. However, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to an address used for another tax type. A notice of assessment mailed to one of two addresses used by a taxpayer was sufficient. *Langdon P. Marvin, Jr.*, 40 TC 982; *Jack Massengale*, TC Memo 1968-64.

**7.33(3)** The last-known address is the address used on the most recent filed and processed return. The following principles, established by case law, for the Internal Revenue Service (IRS) also will be applied in determining the taxpayer's last-known address for purposes of this rule.

a. Although the taxpayer filed a tax return showing a new address, the IRS had not processed the return sufficiently for the new address to be available by computer to the IRS agent who sent the notice of deficiency. Before a change of address is considered available, a reasonable amount of time must be allowed to process and transfer information to the IRS's central computer system. *Diane Williams v. Commissioner of Internal Revenue*, U.S. Court of Appeals, 9th Circuit; 935 F. 2d 1066.

b. If the department knows the taxpayer has moved but does not know the new mailing address, the prior mailing address is the proper place to send a deficiency notice. *Kaestner v. Schmidt*, 473 F. 2d 1294; *Kohn vs. U.S. et al.*, 56 AFTR 2d 85-6147.

c. Knowledge acquired by a collection agent regarding the taxpayer's address in an unrelated investigation was not required to be imputed to the examination division responsible for mailing a notice of deficiency. *Wise v. Commissioner*, 688 F. Supp. 1164.

d. However, information acquired by the department in a related investigation of the taxpayer is binding upon the department, e.g., where the taxpayer files a power of attorney showing a change of address.

**7.33(4)** Procedures for notifying the department of a change in taxpayer's address. The department generally will use the address on the most recent filed and properly processed return by tax type as the address of record for all notices of assessment and denial of claims for refund. If a taxpayer no longer wishes the address of record to be the address on the most recently filed return, the taxpayer must give clear and concise written notification of a change in address to the department. Notifications of a change in address should be addressed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306.

*a.* If after a joint return or married filing separately on a combined return is filed either taxpayer establishes a separate residence, each taxpayer should send clear and concise written notification of a current address to the department.

*b.* If a department employee contacts a taxpayer in connection with the filing of a return or an adjustment to a taxpayer's return, the taxpayer may provide clear and concise written notification of a change of address to the department employee who initiated the contact.

*c.* A taxpayer should notify the U.S. Postal Service facility serving the taxpayer's old address of the taxpayer's new address in order that mail from the department can be forwarded to the new address. However, notification to the U.S. Postal Service does not constitute the clear and concise written notification that is required to change a taxpayer's address of record with the department.

This rule is intended to implement Iowa Code section 421.60.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.34(421) Power of attorney.** No attorney, accountant, or other representative will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization.

**7.34(1)** A power of attorney is required by the department when the taxpayer wishes to authorize an individual to perform one or more of the following acts on behalf of the taxpayer:

*a.* To receive copies of any notices or documents sent by the department, its representatives or its attorneys.

*b.* To receive, but not to endorse and collect, checks in payment of any refund of Iowa taxes, penalties, or interest.

*c.* To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

*d.* To execute consents extending the statutory period for assessment or collection of taxes.

*e.* To fully represent the taxpayer(s) in any hearing, determination, final or otherwise, or appeal.

*f.* To enter into any compromise with the director's office.

*g.* To execute any release from liability required by the department prerequisite to divulging otherwise confidential information concerning the taxpayer(s).

*h.* Other acts as stipulated by the taxpayer.

**7.34(2)** A power of attorney or any supplemental notification intended to be utilized as a power of attorney must contain the following information to be valid:

*a.* Name and address of the taxpayer;

*b.* Identification number of the taxpayer (i.e., social security number, federal identification number, or any state-issued tax identification number relative to matters covered by the power of attorney);

*c.* Name, mailing address, and PTIN (preparer's tax identification number), FEIN (federal employer identification number) or SSN (social security number) of the representative;

*d.* Description of the matter(s) for which representation is authorized which, if applicable, must include:

- (1) The type of tax(es) involved;
- (2) The specific year(s) or period(s) involved; and
- (3) In estate matters, decedent's date of death; and

*e.* A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s) as provided in subrule 7.34(1).

**7.34(3)** A power of attorney may not be used for tax periods that end more than three years after the date on which the power of attorney is received by the department. A power of attorney may concern an unlimited number of tax periods which have ended prior to the date on which the power of attorney is received by the department; however, each tax period must be separately stated.

**7.34(4)** The individual who must execute a power of attorney depends on the type of taxpayer involved as follows:

*a. Individual taxpayer.* In matters involving an individual taxpayer, a power of attorney must be signed by the individual.

*b. Husband and wife.* In matters involving a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife. In any matters concerning a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are not to be represented by the same representative(s), the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

*c. Corporation.* In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, which must certify that the officer has such authority.

*d. Association.* In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, which must certify that the officer has such authority.

*e. Partnership.* In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, which must certify that the partner(s) has such authority.

**7.34(5)** A power of attorney is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450, 450A or 451.

**7.34(6)** A new power of attorney for a particular tax type(s) and tax period(s) revokes a prior power of attorney for that tax type(s) and tax period(s) unless the taxpayer has indicated on the power of attorney form that a prior power of attorney is to remain in effect. For a previously designated representative to remain as the taxpayer's representative when a subsequent power of attorney form is filed, the taxpayer must attach a copy of the previously submitted power of attorney form which designates the representative that the taxpayer wishes to retain. To revoke a designated power of attorney without appointing a new power of attorney, see subrule 7.34(7).

EXAMPLE A. A taxpayer executes a power of attorney for the taxpayer's accountant to represent the taxpayer during an audit of the taxpayer's books and records. After the department issues a notice of assessment, the taxpayer wishes to have the taxpayer's attorney-at-law as an authorized representative in addition to the taxpayer's accountant. The taxpayer may use one of two options to designate the accountant and the attorney-at-law as the taxpayer's representatives: (1) The taxpayer may complete and submit to the department a new power of attorney, Form IA2848 or federal Form 2848, designating both the accountant and the attorney-at-law as the taxpayer's authorized representatives (by submittal of a new power of attorney form, the prior power of attorney designations are revoked, leaving only the subsequent new power of attorney form effective); or (2) the taxpayer may properly complete a new power of attorney form by including the designated attorney-at-law's name, address, PTIN, FEIN or SSN, tax type(s) and tax period(s) on the first page and checking the appropriate box on page 2 of Form IA2848 or page 2 of federal Form 2848. In addition, to retain the accountant as the taxpayer's representative, the taxpayer must also attach to the new completed power of attorney form a copy of the previously submitted power of attorney form designating the accountant as the taxpayer's representative.

EXAMPLE B. A taxpayer wishes to designate an additional power of attorney and retain a prior power of attorney. However, the taxpayer does not wish to utilize a Form IA2848 or a federal Form 2848. In this situation, the taxpayer must send written notification to the department designating the new power of attorney's name, address, PTIN, SSN or FEIN, the tax type(s), the tax period(s) of representation and the name, address, and PTIN, SSN or FEIN of the previously designated power of attorney that the taxpayer seeks to retain for that tax period.

In each of the foregoing examples, the original power of attorney will continue to automatically receive the notices concerning the specified tax matter, unless such authority is explicitly revoked by the taxpayer. Also see subrule 7.34(13) regarding notices.

**7.34(7)** By filing a statement of revocation with the department, a taxpayer may revoke a power of attorney without authorizing a new representative. The statement of revocation must indicate that the authority of the previous power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the power of attorney must be attached).

**7.34(8)** By filing a statement with the department, a representative may withdraw from representation in a matter in which a power of attorney has been filed. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

**7.34(9)** A properly completed Iowa power of attorney, Form IA2848, or a properly designated federal form as described in this subrule, satisfies the requirements of this rule. In addition to the Iowa power of attorney, Form IA2848, the department can accept Internal Revenue Service Form 2848, if references to the "Internal Revenue Service" are crossed out and "Iowa Department of Revenue" is inserted in lieu thereof, as long as such a form contains specific designation by the taxpayer for the state-related taxes at issue. Designation must include, but is not limited to, name, address, PTIN, SSN or FEIN of the representative, the tax type(s) and tax period(s). In addition, the department will accept any other document which satisfies the requirements of this rule.

**7.34(10)** The department will not recognize as a valid power of attorney a power of attorney form attached to a tax return filed with the department except in the instance of a form attached to a fiduciary return of income form, inheritance tax return, generation skipping tax return, or estate tax return.

**7.34(11)** The department will accept either the original, an electronically scanned and transmitted power of attorney form, or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (fax) will be accepted. All copies, facsimiles and electronically scanned and transmitted power of attorney forms must include a valid signature of the taxpayer to be represented.

**7.34(12)** If an individual desires to represent a taxpayer through correspondence with the department, the individual must submit a power of attorney even though no personal appearance is contemplated.

**7.34(13)** Any notice or other written communication (or copy thereof) required or permitted to be given to the taxpayer in any matter before the department must be given to the taxpayer and, unless restricted by the taxpayer, to the taxpayer's first designated power of attorney who is representing the taxpayer for the tax type(s) and tax period(s) contained in the notice. Due to limitations of the department's automated systems, it is the general practice of the department to limit distribution of copies of documents by the department to the taxpayer's first designated power of attorney. Determination of the first designated power of attorney will be based on the earliest execution date of the power of attorney and the first name designated on a power of attorney form listing more than one designated representative.

**7.34(14)** Information from power of attorney forms, including the representative's PTIN, SSN or FEIN, is utilized by department personnel to:

- a. Determine whether a representative is authorized to receive or inspect confidential tax information;
- b. Determine whether the representative is authorized to perform the acts set forth in subrule 7.34(1);
- c. Send copies of computer-generated notices and communications to the representative as authorized by the taxpayer; and

*d.* Ensure that the taxpayer's representative receives all notices and communications authorized by the taxpayer, but that notices and communications are not sent to a representative with the same or similar name.

This rule is intended to implement Iowa Code section 421.60.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.**

**7.35(1)** A taxpayer may designate in separate written instructions accompanying the payment the type of tax and tax periods to which any voluntary payment is to be applied. The taxpayer may not designate the application of payments which are the result of enforced collection.

**7.35(2)** Enforced collection includes, but is not limited to, garnishment of wages, bank accounts, or payments due the taxpayer, or seizure of assets.

This rule is intended to implement Iowa Code section 421.60.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

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CHAPTER 8  
FORMS AND COMMUNICATIONS  
[Prior to 12/17/86, Revenue Department[730]]

**701—8.1(17A) Definitions.** For the purposes of these rules the following definitions apply, unless the context otherwise requires:

“*Communication*” means any method of transfer of data, information, or money by any conduit or mechanism.

“*Department*” means the Iowa department of revenue.

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

“*Form*” means any overall physical arrangement and general layout of communications, using any method of communication, related to tax or other administration and prescribed by the director or otherwise required by law.

“*Person*” means any individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“*Return*” means any form required for tax administration from any person to the department.

This rule is intended to implement Iowa Code paragraph 17A.3(1) “b.”

**701—8.2(17A) Official forms.** The department and the director have developed and provide or prescribe many official forms designed to help persons exercise their rights and discharge their duties under the tax laws and rules, to explain tax laws and rules, to assist in the administration of tax laws and rules, and to assist in general financial administration. Communications with the department, for which official forms have been created, shall be carried out using those forms or approved substitutes. Each direction of every instruction contained within or accompanying official forms shall be followed, and each question within or accompanying every form shall be answered as if the instructions and forms were contained in these rules.

Copies of all official forms, instructions and communication formats may be obtained from the Iowa Department of Revenue, Policy and Communications Division, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306; by telephoning (800)367-3388 or (515)281-3114 (for large orders of forms: (800)532-1531); by faxing (515)242-6040 or on the department’s Web site at [www.iowa.gov/tax](http://www.iowa.gov/tax).

**8.2(1) Nature of official forms.** Most, but not all, official forms are on paper. As prescribed by the director, communication means other than paper documents may be used for official forms.

**8.2(2) Mailing addresses.** The following post office box numbers should be used when corresponding with the department. All addresses are completed: Des Moines, Iowa 50306.

<u>Box Number</u>	<u>Addressee</u>
1792	Individual Income Tax Returns
9187	Motor Vehicle Fuel Tax Returns
10306	Deposit Unit
10411	Withholding Tax Returns
10412	Sales and Use Tax Returns
10413	Franchise Tax Returns and Estimated Payments

<u>Box Number</u>	<u>Addressee</u>
10455	Insurance Premiums Tax Household Hazardous Materials Environmental Protection Charge
10456	Compliance Division Examination Section
10457	Policy and Communications Division
10458	Field Services
10459	Property Tax Rent Reimbursement Claims
10460	Internal Services Division Technology and Information Management Division
10465	Revenue Operations Division Customer Accounts Registration Services
10466	Individual Estimated Payments
10467	Fiduciary and Inheritance Tax
10468	Corporation Income Tax Returns and Estimated Payments
10469	Property Tax
10470	Withholding—Verified Summary of Payments Report
10471	Accounts Receivable
10472	Hearings Section

This rule is intended to implement Iowa Code paragraph 17A.3(1) “b.”  
[ARC 9875B, IAB 11/30/11, effective 1/4/12]

**701—8.3(17A) Substitution of official forms.** This rule is to provide guidance for the use of other than official forms, whether they are on paper, are computer-generated, or are created using other media for communication. Approval shall be obtained prior to use of computer forms, replacement forms, reproduced forms, facsimile forms, or any other forms not provided by the department. The director reserves the right to make changes to forms when needed without prior notification to users of forms. The director also reserves the right to require use of official forms in communications with the department concerning tax administration or other matters.

**8.3(1) Types of substitute forms.** Many types of forms may, upon approval, be substituted for official forms. Descriptions of a partial list follow.

*a. Reproduced forms.* Reproduction (photocopy reprinting) of Iowa tax forms may be accomplished without prior approval of the department provided the following conditions are met:

(1) There is no variation from the official copy or format provided by the department, including reduction and enlargement or other format specification.

(2) Reprinting, copying, or reproduction of the form is not prohibited by another rule within this chapter.

(3) Reprinting or reproduction of the form does not vary from criteria stated elsewhere in this chapter.

*b. Replacement forms.* Replacement forms are forms which are produced by imagery or otherwise replicated using the department official form as a model. These forms may include facsimiles of department forms that have been modified by the addition of line enlargements, copy deletion, or any other modifications.

*c. Computer-generated forms.* Computer-generated forms are forms that are created in their entirety, including layout, by the computer. These forms must be a facsimile of the official form that it is meant to replace.

*d. Federal forms.* Federal forms, or their alternates, do not require prior approval for use provided the form is approved for federal use and Iowa tax instructions or other administrative instructions authorize or require the use of federal forms in lieu of official Iowa forms.

*e. Removable media and electronic reporting.* Any removable media, such as compact discs, or any electronic transmission in other than official form requires prior approval of the department. No prior approval is necessary for submission of compact discs for certain information reporting when they are submitted in accordance with the department policy. To obtain additional information regarding the submitting of magnetic tapes, diskettes or other electronic reporting, please contact the Technology and Information Management Division, P.O. Box 10460, Des Moines, Iowa 50306.

**8.3(2) Approval of substitute forms.** Prior approval of substitute forms may be obtained by writing Technology and Information Management Division, P.O. Box 10460, Des Moines, Iowa 50306; by faxing (515)242-6040; or by a PDF submission via e-mail to [IDRSubForms@iowa.gov](mailto:IDRSubForms@iowa.gov). Fax communication or PDF submissions via e-mail to the department of approval requests are acceptable in limited circumstances. Normally, approval will be granted for use of substitute forms for one year only. Those forms listed on the substitute forms checklist should be submitted for approval. If doubt exists about the need for approval of a particular substitute form, the form should be submitted for consideration.

**8.3(3) Failure to obtain required approval.** Forms filed with the department that are not official or approved may be returned at the discretion of the director.

**8.3(4) Forms that may not be reproduced.** Certain forms supplied by the department shall not be duplicated or reproduced because of special processing requirements for the forms. These forms will normally have an optical scan line with special characters or print to ensure that automated processing equipment accurately credits the proper accounts. Exceptions to allow reproduction may occur on a limited basis with the consent of the department. The requestor must demonstrate compatibility with and meet all requirements and standards of the department to ensure proper and accurate processing of the form by the department. The department, at its option, may provide an explanation as to why a form is not acceptable, but is not required to do so. Forms that may not be reproduced, except as provided for above, include department-generated accounts receivable notices.

**8.3(5) General information.** The following general information is applicable to all reproduced, replacement, or computer-generated forms:

*a. Paper.* Paper must be of at least equal quality to stock used by the department for official forms. Carbon-bonded paper is prohibited for all forms. Colored paper should be used for all forms substituting for official paper forms unless paper used is of the identical color of an official paper form.

*b. Ink and imaging material.* Black ink or black imaging material should be used in the printing or duplication of all substitute forms on paper.

*c. Size.* Paper forms must be the same size as the official form.

*d. Legibility.* All forms must have a high standard of legibility.

*e. Distinctive markings and symbols.* Some official forms contain distinctive symbols. These symbols must be reproduced on other than official forms.

*f. Labels.* Preprinted labels furnished by the department should be affixed to returns submitted to the department.

*g. Accuracy of reproduction.* Forms submitted for approval should be a facsimile of the official form. No variation from the official form will be allowed for forms which are identified as returns.

This rule is intended to implement Iowa Code paragraph 17A.3(1) "b."  
[ARC 9875B, IAB 11/30/11, effective 1/4/12]

**701—8.4(17A) Description of forms.** Forms prescribed by the director can be divided into those required for the administration of various taxes and those required for administrative systems other than tax-related.

**8.4(1) Tax forms.** Taxes administered by the department that require forms are listed in the following lettered paragraphs:

*a.* Corporate income return systems include forms designed by the department as well as forms used in federal tax administration. Approved substitute forms may be used for returns.

*b.* Corporate income tax field and office audit systems, related field collections systems, and the corporate tax error resolution system have forms designed by the department. Approved substitute forms may be used.

*c.* Franchise tax returns include forms designed by the department as well as forms used in federal tax administration. Approved substitute forms may be used for returns.

*d.* Franchise audit and collection systems have forms designed by the department. Approved substitute forms may be used.

*e.* Corporate and franchise estimated tax systems have forms designed by the department. Approved substitute forms may be used.

*f.* Individual and fiduciary income returns include forms designed by the department as well as forms used in federal tax administration. Approved substitute forms may be used for returns.

*g.* Individual and fiduciary income tax field and office audit systems and related field collections systems have forms designed by the department. Approved substitutes may be used.

*h.* New jobs tax credit system has forms designed by the department. Approved substitute forms may be used.

*i.* Individual income tax withholding payment voucher systems have forms designed by the department. Approved substitute forms may be used.

*j.* IA-W4 system, declaration of estimated tax, and withholding penalty waiver systems have forms designed by the department. Approved substitutes may be used.

*k.* Sales and use tax returns and payment voucher systems have forms designed by the department. Approved substitute forms may be used in limited situations.

*l.* Local option sales and services tax and hotel/motel tax systems have forms designed by the department. Approved substitute forms may be used in limited situations.

*m.* Field and office audit and collections systems for sales and use tax, sales tax refund examination system, industrial machinery, equipment, and computer refund systems, and sales and use tax penalty waiver systems have forms designed by the department. Approved substitute forms may be used.

*n.* Motor fuel tax returns systems have forms designed by the department. Approved substitute forms may be used.

*o.* Special fuel tax returns systems have forms designed by the department. Approved substitute forms may be used.

*p.* Motor fuel tax and special fuel tax error resolution systems and related field and office audit and collection systems have forms designed by the department. Approved substitute forms may be used.

*q.* Inheritance, generation skipping transfer, qualified use inheritance, and estate tax returns systems have forms designed by the department. Approved substitute forms may be used.

*r.* Inheritance, generation skipping transfer, qualified use inheritance and estate tax field and office audit systems, and related field collections systems have forms designed by the department. Approved substitute forms may be used.

*s.* Cigarette and tobacco tax systems with related office and field audit and field collection systems have forms designed by the department. Approved substitute forms may be used.

t. Property assessor and deputy assessor examination records systems have forms designed by the department. Approved substitute forms may be used.

u. Central property tax assessments system has forms designed by the department. Approved substitute forms may be used.

v. Elderly credit mobile home, Iowa disabled and senior citizen property tax, and special assessment credit systems have forms designed by the department. Approved substitute forms may be used.

w. Environmental protection charge systems have forms designed by the department. Approved substitute forms may be used.

x. Excise tax on unlawful dealing in certain substances system has forms designed by the department. Approved substitute forms may be used.

y. Taxpayer contact systems have forms designed by the department. Approved substitute forms may be used.

z. Federal and state exchange of information systems have forms designed by the department as well as others. Approved substitute forms may be used.

aa. Accounts receivable notices system has forms designed by the department. No substitute forms may be used.

bb. The department shall provide the taxpayer a statement of the rights of a taxpayer and obligations of the department during an audit, procedures by which a taxpayer may appeal an adverse decision of the department, and procedures which the department uses to enforce the tax laws. No substitute form may be used.

**8.4(2) Other forms.** Rescinded IAB 4/14/04, effective 5/19/04.

This rule is intended to implement Iowa Code paragraph 17A.3(1) "b" and sections 421.7 and 422.21. [ARC 9875B, IAB 11/30/11, effective 1/4/12]

**701—8.5(422) Electronic filing of Iowa income tax returns.** Electronic filing allows individuals and businesses that meet department criteria to file their Iowa income tax returns electronically. All information is electronically transmitted. Nothing is submitted on paper unless specifically requested by the department. A taxpayer's electronic Iowa return will include the same information as if the taxpayer had filed a paper return.

There is no statutory requirement that taxpayers file their Iowa income tax returns electronically. Taxpayers also have the option to file by paper.

**8.5(1) Definitions.** For the purpose of this rule, the following definitions apply, unless the context otherwise requires:

"*Acknowledgment*" means a report generated by the department and sent electronically to a transmitter via the IRS indicating the department's acceptance or rejection of an electronic submission.

"*Declaration for e-File Return form*" means a taxpayer declaration form that authenticates the electronic tax return, authorizes its transmission, and consents to the financial transaction order as designated using the financial institution information provided.

"*Department*" means the Iowa department of revenue.

"*Direct debit*" means an order for electronic withdrawal of funds from a taxpayer's financial institution account for payment to the Iowa department of revenue.

"*Direct deposit*" means an order for electronic transfer of a refund into a taxpayer's financial institution account.

"*E-file provider*" means a firm that is assigned an Electronic Filing Identification Number (EFIN) by the IRS to assume any one or more of the following IRS e-file provider roles: electronic return originator, intermediate service provider, transmitter, software developer, or reporting agent.

"*Electronic filing*" means a paperless filing of the Iowa income tax return, order for financial transaction, or both by way of the IRS e-file program, also known as federal/state electronic filing (ELF/MeF).

"*Electronic return originator (ERO)*" means an authorized IRS e-file provider that originates the electronic submission by any one of the following methods: electronically sending an electronic tax

return to a Transmitter that will transmit the electronic tax return to the IRS, directly transmitting the electronic tax return to the IRS, or providing the electronic tax return to an Intermediate Service Provider for processing prior to transmission to the IRS.

*“Intermediate service provider”* means the firm that assists with processing submission information between the ERO (or the taxpayer in the case of online filing) and a Transmitter.

*“Online filing”* means the process for taxpayers to self-prepare returns by entering return data directly into commercially available software, software downloaded from an Internet site and prepared off-line, or through an online Internet site.

*“Origination of an electronic return”* means the action by an ERO of electronically sending the return directly to an Intermediate Service Provider, a Transmitter, or the IRS.

*“Reporting agent”* means a firm that originates the electronic submission of certain returns for its clients or transmits the returns to the IRS in accordance with the IRS electronic filing procedures, or both.

*“Self-select PIN signature alternative”* means the taxpayer electronically signs the return with a personal identification number (PIN). The PIN is any five numbers (except all zeros) that taxpayers choose to enter as their electronic signature.

*“Software developer”* means an approved IRS e-file provider that develops software according to IRS and Iowa specifications for the purposes of formatting electronic returns, transmitting electronic returns directly to the IRS, or both. A software developer may sell its software.

*“Stockpiling”* means collecting returns from taxpayers or from other e-file providers and waiting more than three calendar days after receiving the information necessary for transmission to transmit the returns to the department.

*“Transmitter”* means a firm that transmits electronic tax return information directly to the IRS and routes electronic acknowledgments from the IRS (and the states) to the firm originating the electronic return.

**8.5(2) Completion and documentation of the electronic return.**

*a.* All monetary amounts on the prepared return must be in whole dollars. The electronic submission must match the prepared return. The taxpayer(s) must declare the authenticity of the electronic return before it is transmitted. The department has adopted the self-select PIN signature alternative as implemented by the IRS. If the ERO elects not to use the taxpayer self-select PIN signature alternative, the Declaration for e-File Return form must be completed and signed by the preparer, ERO, and taxpayer(s). If the ERO makes changes to the electronic return after the Declaration for e-File Return form has been signed by the taxpayer(s), a new Declaration for e-File Return form must be completed and signed by the taxpayer(s) before the return is transmitted.

*b.* The ERO must provide the taxpayer a copy of all forms and information to be filed. The taxpayer and ERO must retain all tax documentation for three years. The Declaration for e-File Return form and accompanying schedules are to be furnished to the department only when specifically requested.

**8.5(3) Direct deposit and direct debit.**

*a.* Taxpayers designating direct deposit of the Iowa refund or direct debit of payment remitted to the department on electronically filed returns must provide proof of account ownership to the ERO. The department is not responsible for the misapplication of a direct deposit refund or direct debit payment caused by error, negligence, or wrongdoing on the part of the taxpayer, e-file provider, financial institution or any agent of the above.

*b.* Once the return has been transmitted, the financial order may not be altered. The department may, when processing procedures allow, grant a taxpayer’s timely request to revoke the financial order. A direct deposit or direct debit order will be disregarded by the department if the electronic submission is rejected for any reason as indicated in the acknowledgment.

*c.* The department may, when processing procedures require, convert a direct deposit order to a paper check. If a refund is deposited into an incorrect bank account, the department will issue a paper refund check once the funds are returned by the financial institution.

*d.* Funds will be withdrawn from the account specified in the direct debit order no sooner than the date specified by the taxpayer. This date must occur no later than the due date when the due date

has not yet elapsed. This date must specify immediate payment when the due date has already elapsed. This date will be superseded by the electronic postmark date when the date occurs prior to the electronic postmark date. The direct debit payment within the electronic submission accepted by the department that is postmarked on or before the payment due date is considered timely, provided that the direct debit payment is honored by the financial institution.

**8.5(4) *Software approval.*** Software developers that want to develop electronic submission formatting software for e-filing Iowa returns shall register their respective software products annually with the department. The department publishes specifications, test packages, and testing procedures. Software must pass transmission tests before the department will approve it for electronic filing of Iowa income tax returns. The department will define the test period annually.

**8.5(5) *ERO acceptance to participate.*** Once accepted by the IRS as an ERO for a specific tax type, the ERO is automatically accepted to e-file Iowa returns of that tax type, provided that the department offers the tax type for e-file.

**8.5(6) *Suspension of an e-file provider from participation in the Iowa electronic filing program.***

*a.* The department may immediately suspend, without notice, an e-file provider from the Iowa electronic filing program. In most cases, a suspension is effective as of the date of the letter informing the e-file provider of the suspension. Before suspending an e-file provider, the department may issue a warning letter describing specific corrective action required to correct deviations set forth in paragraph 8.5(6) “*b.*” An e-file provider will be automatically prohibited from participating in the Iowa electronic filing program if denied participation in, or suspended from, the federal electronic filing program.

*b.* An e-file provider that is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if any of the following conditions occur. The list is for illustrative purposes only and is not deemed to be all-inclusive.

- (1) Deterioration in the format of electronic returns transmitted.
- (2) Unacceptable cumulative error or rejection rate or failure to correct errors resulting from the transmission of electronic returns.
- (3) Untimely received, illegible, incomplete, missing, or unapproved substitute Declaration for e-File Return forms when requested by the department.
- (4) Stockpiling returns at any time while participating in the Iowa electronic filing program.
- (5) Failure on the part of the transmitter to retrieve acknowledgments within two working days of the department’s providing them.
- (6) Failure on the part of the transmitter to initiate the communication of acknowledgments to the ERO within two working days of the department’s providing them.
- (7) Significant complaints about the e-file provider.
- (8) Failure on the part of the e-file provider to cooperate with the department’s efforts to monitor e-file providers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns.
- (9) Submitting the electronic return with information that is not identical to information on the Declaration for e-File Return form.
- (10) Transmitting the electronic return with software not approved by the department for use in the Iowa electronic filing program for the given tax type and tax period.
- (11) Failure on the part of the e-file provider to provide W-2s, 1099s, or out-of-state tax returns when requested by the department.

**8.5(7) *Administrative procedure for denial of participation or suspension of participation.***

*a.* When a firm has requested participation in the Iowa electronic filing program but there is reason to deny the request, the department shall send a letter to the firm advising that entry into the program has been denied. When an e-file provider is a participant in the Iowa electronic filing program but is to be suspended from the program for any condition described in subrule 8.5(6), the department will send a letter to notify the e-file provider about its suspension from the program.

*b.* When the firm either disagrees with the denial of participation letter or the suspension from participation letter, the firm must file a written protest to the department within 60 days of the date of the denial letter or the suspension letter. The written protest must be filed pursuant to rule 701—7.8(17A).

During the administrative review process, the denial of the firm's participation in or the suspension of the firm from the Iowa electronic filing program shall remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

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TITLE II  
EXCISECHAPTER 11  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—11.1(422,423) Definitions.** When the word “department” appears in this chapter it means the “Iowa Department of Revenue”; the word “director” means the “director of revenue”; the word “tax” means the “tax upon retail sales or use of tangible personal property or taxable services.”

This rule is intended to implement Iowa Code sections 422.3 and 422.68(1).

**701—11.2(422,423) Statute of limitations.** On and after July 1, 1987, the period for the department’s examination and determination of the correct amount of tax is unlimited in the following circumstances:

1. When a return has been filed, if the return was false or fraudulent and made with the intent to evade tax, or

2. If there has been a failure to file a return.

**11.2(1) Varying periods of limitation.** In all circumstances other than those described in the introductory paragraph of this rule, the department has the following limited amounts of time to examine a return, determine sales or use tax due, and give notice of assessment to the taxpayer:

a. For returns filed for quarterly periods beginning before January 1, 2000, five years.

b. For returns filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, four years.

c. For returns filed for quarterly periods beginning on or after January 1, 2001, three years.

For agreements entered into on and after July 1, 1992, the applicable period of limitation can be extended by the taxpayer’s signing a waiver on a form provided by the department.

**11.2(2) One-year statute of limitations.** Whenever books and records are examined by an employee designated by the director of the department of revenue, whether to verify a return or claim for refund or in making an audit, then an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the periods of limitation described in subrule 11.2(1) above. *The Maytag Company v. Iowa State Tax Commission*, Equity No. 76-130-26112, Jasper County District Court, March 1, 1966.

EXAMPLE: An employee of the department examines the books and records of the taxpayer for the period of taxpayer’s returns filed on April 30, 1973, to April 30, 1977. The examination is completed on February 3, 1978. The notice of assessment must be given on or before April 30, 1978, in order to include the earliest tax return period above. If the notice of assessment is given on February 2, 1979, it is within the one-year period, but it would not be timely for purposes of the periods April 30, 1973, to December 31, 1973, although the subsequent periods beginning January 1, 1974, to April 30, 1977, could be included.

EXAMPLE: An employee of the department examines a taxpayer’s books and records located in Davenport for the returns filed on April 30, 1974, to April 30, 1977. The examination is completed on February 2, 1978. However, the taxpayer’s books and records for the same period located in Des Moines have not been examined. The one-year limitation period with reference to the Davenport books and records commences on February 2, 1978. However, the one-year period concerning the Des Moines books and records has not commenced.

This rule is intended to implement Iowa Code subsections 422.54(1), 422.54(2), and 422.70(1) as amended by 1999 Iowa Acts, chapter 156.

**701—11.3(422,423) Credentials and receipts.** Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 422.68(1), 422.71 and 423.23.

**701—11.4(422,423) Retailers required to keep records.**

**11.4(1) *Records required.*** The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include the normal books of account ordinarily maintained by a person engaged in the activity in question and include all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns. In addition to the above, the following more specific records requirements apply:

- a. A daily record of the amount of all cash and time payments and credit sales.
- b. A record of the amount of all merchandise purchased and of all services performed for a retailer, including all bills of lading, invoices and copies of purchase orders.
- c. A record of all deductions and exemptions taken in filing a sales or use tax return.
- d. A true and complete inventory of the value of the stock on hand taken at least once a year. This includes an inventory of merchandise accepted as partial payment of the sales price on new merchandise.
- e. An accurate record of all services performed, including materials purchased for use in performing these services.
- f. Exemption certificates which are evidence of exempt sales must be executed or be in effect at or near (within 30 days of sale) the time of the sale. See 701—subrule 15.3(2).

**11.4(2) *Microfilm and related record systems.*** Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as "microfilm" in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those maintained as specified by the Internal Revenue Service under Revenue Procedure 81-46, Section 5. Microfilm reproductions of supporting records of detail, i.e., sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

- a. Appropriate facilities are provided to ensure the preservation and readability of the films for periods required.
- b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.
- c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.
- d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.
- e. Any audit of "detail" on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or a designated representative.
- f. A posting reference must be on each invoice.
- g. Credit memoranda must carry a reference to the document evidencing the original transaction.
- h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

**11.4(3) *Automatic data processing records.*** Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

- a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or a designated representative upon request. The system should be so designed that the supporting documents, i.e., sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

- (1) The application being performed.
- (2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures).
- (3) The controls used to ensure accurate and reliable processing. Program and system changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

**11.4(4) *Electronic data interchange or EDI technology.*** The purpose of this subrule is to adopt the “Model Recordkeeping and Retention Regulation” report as promulgated by the Federation of Tax Administrators’ Steering Committee Task Force on EDI Audit and Legal Issues for Tax Administration (March 1996). This subrule defines the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa Code sections 422.50, 422A.1, and 423.21. It is also the purpose of this subrule to address these requirements where all or part of the taxpayer’s records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this subrule and the other subrules within rule 701—11.4(422,423). All required records must be made available on request by the department or its authorized representatives as provided in Iowa Code sections 422.50 and 423.21. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, as previously stated, this will not relieve a taxpayer of the obligation to comply with making records available to the department.

a. Definitions. The following definitions are applicable to this subrule:

“*Database management system*” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

“*Electronic data interchange*” or “*EDI technology*” means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

“*Hard copy*” means any documents, records, reports, or other data printed on paper.

“*Machine-sensible record*” means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

“*Storage-only imaging system*” means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

“*Taxpayer*” as used in this subrule means any person, business, corporation, fiduciary, or other entity that is required to file a return with the department of revenue.

*b.* Record-keeping requirements—machine-sensible records. A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term “standard record format” does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so the department may effectively review the taxpayer’s records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, for sales tax purposes the retained records should contain the following minimal information: vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping details. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation. In addition, pursuant to Iowa Code sections 421.9, 422.15, 422.36, 422.50, 422.59, 422A.1, and 423.21, the department must have access to the taxpayer’s EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the

records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes with the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

c. Record maintenance requirements. The department recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. (The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, Edition.) The taxpayer's computer hardware or software must accommodate the extraction and conversion of retained machine-sensible records.

d. Access to machine-sensible records. If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access will be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

e. Taxpayer's responsibility and discretionary authority. In conjunction with meeting the requirements of paragraph "b" of this subrule, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph "b" of this subrule. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

f. Alternative storage media. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the rules governing alternative storage media are met. For details regarding alternative storage, see subrule 11.4(2), "Microfilm and related record systems."

g. Effect on hard-copy record-keeping requirements. Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created

or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in paragraph “f” above and subrule 11.4(2).

If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

Hard-copy records generated at the time of transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in 11.4(4) “b”(2)“1.”

Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

Nothing in this rule will prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**11.4(5) Preservation of records.** The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time. *McCarville v. Ream*, 247 Iowa, 72 N.W.2d 476 (1956).

The department shall be able to examine the records of a taxpayer for a period of years as is necessary to adequately determine if tax is due in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and the department will compute the tax liability as authorized in Iowa Code section 422.54.

This rule is intended to implement Iowa Code sections 422.47, 422.50, 422.54, 423.16 and 423.21.

**701—11.5(422,423) Audit of records.** The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or estimating the tax liability of any taxpayer. The right to examine records includes the right to examine copies of the taxpayer’s state and federal income tax returns. When a taxpayer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the department deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to sales and use tax.

The department shall have the legal obligation to inform the taxpayer when an examination of the taxpayer’s books, papers, records, memoranda, or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections 422.50, 422.70, 423.21, and 423.23.

**701—11.6(422,423) Billings.**

**11.6(1) Notice of adjustments.**

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that gross receipts, gross purchases, or services subject to sales and use tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, they should then file a claim for refund. However,

payment will not be required until an assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the person may discuss with the agent, auditor, clerk, or employee who notified them of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Audit and Compliance Division, Des Moines, Iowa. Documents and records supporting the person's position may be required.

*c.* Power of agent, auditor or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

**11.6(2) Notice of assessment.** If, after following the procedure outlined in subrule 11.6(1), paragraph "b," no agreement is reached and the person does not pay the amount determined to be correct, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.8(17A), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims.

**11.6(3) Supplemental assessments and refund adjustments.** The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 422.54(1), 422.54(2), 422.57(1), 422.57(2), 422.70, 423.21 and 423.23.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—11.7(422,423) Collections.** If the director determines it expedient or advisable, the director may enforce the collection of the tax liability which has been determined to be due. In the action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of sales and use tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement Iowa Code sections 422.26, 422.56, and 423.17.

**701—11.8(422,423) No property exempt from distress and sale.** By reference, Iowa Code section 422.56 makes section 422.26 a part of the sales and use tax law and provides that said section shall apply in respect to a sales and use tax liability determined to be due by the department. The department shall proceed to collect the tax liability after the same has become delinquent; but no property of the taxpayer shall be exempt from the payment of said tax.

This rule is intended to implement Iowa Code sections 422.26, 422.56, and 423.17.

**701—11.9(422,423) Information confidential.** When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to the person the amount of unpaid taxes due by a taxpayer. The person

shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. Examples of those who might seek information on a taxpayer are persons from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property.

Upon request, the department may disclose to any person whether or not a taxpayer has a sales tax permit because the law requires the taxpayer's permit to be conspicuously posted at all times in the taxpayer's place of business, thus becoming public information.

All other information obtained by employees of the department in the performance of their official duties is confidential and cannot be disclosed. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.56, 422.72, and 423.23.

**701—11.10(423) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code section 423.35, the director has determined that the following procedures will be instituted with regard to bonds:

**11.10(1) When required.**

*a. Classes of business.* When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security may be required from every retailer operating a business within this class unless it is shown to the director's satisfaction that a particular retailer within a designated class is solvent and that the retailer previously timely remitted the tax. If the director selects certain classes of business for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

*b. New applications for sales tax permits.* Notwithstanding the provisions of paragraph "a" above, an applicant for a new sales tax permit may be required 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 permit for a prior business and the remittance record of the tax under the prior permit falls within one of the conditions in paragraph "c" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior permit, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in paragraph "c" or the person had a previous sales tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous permit holder. For example, X, a corporation, had a previous sales tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a sales tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

*c. Existing permit holders.* Existing permit holders may be required to post a bond or security under the following circumstances:

(1) When they have had one or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on an annual basis.

(2) When they have had two or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on a quarterly basis.

(3) When they have had four or more delinquencies in remitting the sales tax or filing timely deposits or returns during the last 24 months if filing returns on a monthly basis.

(4) When they have had eight or more delinquencies during the last 24 months if filing returns on a semimonthly basis.

The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—13.7(422). However, the late filing of the return or the late payment of the tax will not

count as a delinquency if the permit holder can satisfy one of the conditions set forth in Iowa Code section 421.27.

*d. Return of bond.* If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the permit holder maintains a good filing record for a period of two years, the permit holder may request that the department return the bond or security. The department may elect to return the bond without a request from the permit holder.

*e. Applying bond.* The department may apply a bond to any existing tax liability of the permit holder at its discretion.

**11.10(2) Type of security or bond.** When it is determined that a permit holder or applicant for a sales tax permit is required to post collateral to secure the collection of the sales tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. “Cash” means guaranteed funds including, but not limited to, the following: (1) cashier’s check, (2) money order or (3) certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An acknowledgement of assignment from the bank must accompany the original certificate of deposit filed with the department. When a permit holder elects to post cash rather than a certificate of deposit as a bond, conversion to certificate of deposit will not be allowed. When the permit holder is a corporation, an officer of the corporation may assume personal liability as security for the payment of the sales tax. The officer will be evaluated as provided in subrule 11.10(1) as if the officer applied for a sales tax permit as an individual.

**11.10(3) Amount of bond or security.** When it is determined that a permit holder or applicant for a sales tax permit 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 permit holder or applicant will be or is a semimonthly depositor, a bond or securities in an amount sufficient to cover three months’ sales tax liability will be required. If the permit holder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months’ sales tax liability will be required. If the applicant or permit holder 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. If the applicant or permit holder will be or is an annual filer, the bond or securities which will be required would be in the amount of one year’s tax liability. The department does not accept bonds for less than \$100. If the bond amount is calculated to be less than \$100, a \$100 bond is required.

This rule is intended to implement Iowa Code section 423.35.

**701—11.11(422) Retailers newly liable, as of July 1, 1988, for collection of sales tax.** Rescinded IAB 10/13/93, effective 11/17/93.

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◊ Two or more ARCs

CHAPTER 12  
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST  
[Prior to 12/17/86, Revenue Department[730]]

**701—12.1(422) Returns and payment of tax.** Every retailer collecting more than \$50 in tax in any one month shall make a monthly deposit with the department. A retailer collecting between \$50 and \$500 a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than 30 percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting \$500 or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter. The quarterly return is due on or before the last day of the month following the end of the quarter.

Effective January 1, 1983, retailers collecting \$50 a month and not more than \$4000 in tax in a semimonthly period shall deposit the actual amount of tax collected during the month or an amount equal to one-third of the amount of tax collected and paid during the preceding quarter.

Every retailer collecting more than \$4000 in tax in a semimonthly period shall make a semimonthly deposit with the department. A retailer collecting more than \$4000 in a semimonthly period shall deposit (1) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the preceding quarter or (2) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the same quarter of the previous year. The method of reporting selected by the retailer, either option 1 or option 2, shall remain consistent for at least four quarters. The first semimonthly deposit is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth of the month. The second semimonthly deposit is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter.

Retailers required to make semimonthly or monthly deposits under any of the above methods of estimating tax based upon a period when the tax rate was 4 percent shall adjust deposits for periods beginning on or after July 1, 1992, to reflect the increase in the tax rate to 5 percent as provided in Iowa Code section 422.43.

On the quarterly return, every retailer shall report the gross sales for the entire quarter listing all allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited for the previous five semimonthly deposits. The quarterly return is due on or before the last day of the month following the end of the calendar quarter.

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit sales tax for only that specific quarter in which the retailer conducted business.

Effective January 1, 1980, if it is expected that the total annual tax liability of a retailer will not exceed \$120 for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The returns and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

Following are nonexclusive examples the department could reasonably expect to be within the guidelines for annual reporting:

1. A person selling tangible personal property or taxable services where a major portion of the business is the selling of tangible personal property or taxable services exempt from the imposition of tax; such as a wholesaler whose sales are primarily for resale, or a contractor whose business is primarily new construction.

2. A person whose business is primarily seasonal, or a person engaged in part-time selling of tangible personal property or taxable services.

3. A person whose sales are of a nontaxable service and who may, on occasion, sell tangible personal property incidental to the service.

When the due date falls on Saturday, Sunday, or a legal holiday, the return or deposit will be due the first business day following such Saturday, Sunday, or legal holiday. If a return or deposit is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return or deposit not be received until after that date. Mailed returns should be addressed to Sales/Use Tax Processing, P.O. Box 10412, Des Moines, Iowa 50306.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47, 422.51, 422.52, and 423.2.

**701—12.2(422,423) Remittances.** The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; and, when feasible, the taxpayer shall use them when completing and mailing a return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

For tax periods starting on or after April 1, 1990, semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified in the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections 422.16, 422.51, 422.52, 423.6, 423.13 and 423.14.

**701—12.3(422) Permits and negotiated rate agreements.** A person making retail sales in Iowa is required to obtain a sales tax permit from the department of revenue. Certain qualified purchasers, users, or consumers may obtain a direct pay permit which allows qualified purchasers, users, or consumers to remit tax directly to the department rather than to the retailer at the time of purchase or use. The following provisions govern the issuance of each type of permit.

**12.3(1) Sales tax permits.** Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 701—29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

**12.3(2) Direct pay permits.** Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property or enumerated services pursuant to Iowa Code chapters 422, 422B, and 423 may remit tax owed directly to the department of revenue instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue.

*a. Qualifications for a direct pay permit.* To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property or enumerated services.

(2) The applicant must have an accrual of sales and use tax liability on consumed goods of more than \$4,000 in a semimonthly period. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of \$4,000 in sales and use tax liability in a semimonthly period to qualify, if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer must indicate which locations will be utilizing the direct pay permit at the time of application.

(3) The applicant must make deposits and file returns pursuant to Iowa Code section 422.52. See subrule 12.3(2), paragraph “d,” for further details.

*b. Nonqualifying purchases or uses.* The granting of a direct pay permit is not allowed for any of the following:

(1) Taxes imposed on the sale, furnishing, or service of gas, electricity, water, heat, pay television service, or communication service.

(2) Taxes imposed under Iowa Code section 422C.3 (sales tax on the rental receipts of qualifying rental motor vehicles), Iowa Code section 423.7 (use tax on the sale or use of motor vehicles), or Iowa Code section 423.7A (use tax on the lease price of qualifying leased motor vehicles).

*c. Application and permit information.* To obtain a direct pay permit, a purchaser, user, or consumer must properly complete an application form prescribed by the director of revenue and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department of revenue or vendors over the last two years prior to application, an average of \$4,000 in a semimonthly period.

Upon approval, the director will issue a direct pay permit to qualifying applicants. The permit will contain direct pay permit identifying information including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—15.3(422,423).

*d. Remittance and reporting.* Sales, use, and local option tax that is to be reported and remitted to the department will be on a semimonthly basis. Remittance of tax due under a direct pay permit will begin with the first quarter after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit must be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales and service tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a quarterly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 422.52. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 422.52.

*e. Permit revocation and nontransferability.* A direct pay permit may be used indefinitely unless it is revoked by the director. A direct pay permit is not transferable and it may not be assigned to a third party. The director may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 422.53. If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of

purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

*f. Record-keeping requirements.* The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit must retain possession of the direct pay permit. The permit holder must keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(422,423).

(2) Vendor. A vendor must retain a valid exemption certificate under rule 701—15.3(422,423) which is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(422,423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—15.3(422,423).

**12.3(3) Negotiated rate agreements.** Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in subrule 12.3(2), paragraph "b," above, and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

All negotiated rate agreements shall contain the following information or an explanation for its omission:

1. The name of the taxpayer who has entered into the agreement with the department.
2. The name and title of each person signing the agreement and the name, telephone or fax number, and E-mail or physical address of at least one person to be contacted if questions regarding the agreement arise.
3. The period during which the agreement is in effect and the renewal or extension rights (if any) of each party, and the effective date of the agreement.
4. The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items which will be excluded from the agreement, and any circumstances which will result in a changed rate or rates or changed composition of classes to which rates are applicable.
5. Actions or circumstances which render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
6. Rights, if any, of the parties to resort to mediation or arbitration.
7. An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.
8. The conditions by which the agreement may be terminated and the effective date of the termination.
9. The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
10. Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266.

**701—12.4(422) Nonpermit holders.** Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the

bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

**701—12.5(422,423) Regular permit holders responsible for collection of tax.** A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

**701—12.6(422,423) Sale of business.** A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

**701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors.** In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

**701—12.8(422) Vending machines and other coin-operated devices.** An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42(16), 422.43, 422.51, and Iowa Code chapter 455C.

**701—12.9(422) Claim for refund of tax.** Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.8(17A).

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A \$10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

EXAMPLE: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section 422.73(1). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in section Iowa Code 422.73(1). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section 422.73.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

#### **701—12.10(423) Audit limitation for certain services.**

**12.10(1) Definitions.** For purposes of this rule, the following definitions shall govern:

“*Landscaping*” means the same as defined in rule 701—26.61(423).

“*Lawn care*” means the same as defined in rule 701—26.61(423).

“*Tree trimming and removal*” means the same as defined in rule 701—26.66(423).

**12.10(2) Audit limitation for lawn care, landscaping, and tree trimming and removal services.** Notwithstanding any other provision of the Iowa Code to the contrary, the department shall not attempt to collect delinquent sales tax or use tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years prior to

the date of an audit. The date an audit will begin is when the department presents notification that the person is being contacted for an audit.

This rule is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

**701—12.11** Reserved.

**701—12.12(422) Extension of time for filing.** Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 422.51.

**701—12.13(422) Determination of filing status.**

**12.13(1) Prior to January 1, 2003.** Iowa Code sections 422.51(4) and 422.52 provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 701—12.1(422)).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
Semimonthly	\$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds \$24,000.
Monthly	\$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds \$150.
Annual	\$120 or less in tax in prior year.	Retailer remits \$120 or less in tax for last 4 quarters and requests annual filing.
Seasonal		Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only.
Quarterly	All other filers.	

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

*a.* Incorrect historical data is used in the conversion. A business may meet the criteria based on initial information available, 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.

*b.* Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by department.

Exceptions will not be granted in instances where the retailer's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial of their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

**12.13(2) January 1, 2003, and after.** Effective July 1, 2002, the department and the department of management have the authority to change the above-mentioned filing thresholds established by department rule. After review of these filing thresholds, the department has determined that new thresholds are necessary and are to be implemented January 1, 2003. Accordingly, this subrule sets forth the filing thresholds for each filer based on the amount of sales tax collected.

<u>Filing Status</u>	<u>Threshold</u>	<u>Test Criteria</u>
Semimonthly	Greater than \$60,000 in annual state sales tax (more than \$2,500 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$15,000 per quarter.
Monthly	Between \$6,000 and \$60,000 in annual state sales tax (more than \$500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.
Quarterly	Between \$120 and \$6,000 in annual state sales tax.	Tax remitted in 3 of most recent 4 quarters examined exceeds \$30 per quarter.
Annual	Less than \$120 in state sales tax for the prior year.	Tax remitted in prior year is less than \$120.
Seasonal	Retailer remits tax for only 1 quarter during the previous calendar year and requests filing for 1 quarter only.	

A retailer shall be notified in writing when it is determined that a retailer's filing status will be changed. A retailer has the option of requesting, within 30 days of the date of the department's notice of a change in filing frequency, that the retailer file more or less frequently than required by the department. A request to file on a less frequent basis than assigned by the department must be in writing and submitted to the department. Once such a written request is filed by the retailer, the department will review the request and issue a written determination to the retailer.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

*a.* 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.

*b.* 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.

A retailer may also request to file more frequently than assigned by the department; the request may be made orally, in person, or by telephone. With the exception of those retailers who previously filed on a quarterly basis and have been changed to an annual filing frequency, any retailer seeking to file on a more frequent basis than assigned shall be required to deposit revenues by electronic funds transfer if the department allows the retailer to file more frequently.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing 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.

This rule is intended to implement Iowa Code sections 421.14, 422.51, and 422.52, and sections 422.54 as amended by 2002 Iowa Acts, House File 2622, section 11, and 423.13 as amended by 2002 Iowa Acts, House File 2622, section 14.

**701—12.14(422,423) Immediate successor liability for unpaid tax.** A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

**12.14(1) Immediate successors having a duty to withhold.** Only an immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price if necessary. Persons who fail some aspect of this test, e.g., because they take by operation of law rather than by contract or provide no consideration, are not obligated to investigate or withhold. Nonexclusive examples of persons not so obligated are the following:

- a. A person foreclosing on a valid security interest.
- b. A person retaking possession of premises under a valid lease.
- c. A spouse electing to take under a will.
- d. A person taking by gift.
- e. Any other person taking for what would legally be considered "for value" but without the payment of a recognizable "purchase price."

Included within the meaning of the phrase "immediate successor" is a corporation resulting from the action of a sole proprietor who incorporates a business in which the sole proprietor is the only or the controlling shareholder; or a sole proprietorship established from a corporation of which the sole proprietor was the exclusive, majority, or controlling stockholder.

**12.14(2) More than one immediate successor.** If a retailer sells a business or stock of goods to two or more persons the following rules apply:

a. *Sale of stock of goods to two or more persons.* If a retailer sells a substantial portion of the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person is an "immediate successor" and personally liable for payment of tax to the extent of tax, interest, or penalty owed or the amount of the individual purchase price, whichever is the lesser.

EXAMPLE: A sells the stock of goods from a furniture business, in unequal portions, to B, C, and D. B pays a \$5,000 purchase price for a portion of the stock of goods, C pays \$20,000 for a portion of the stock of goods, and D pays a \$30,000 purchase price for the remainder of A's stock of goods. A, at the time of the transfers, owes the department of revenue \$10,000 in sales tax, interest, and penalty. Neither B, C, nor D withholds any amount for payment of tax from the purchase price. B, C, and D individually and together are liable for payment of the tax. Each is personally liable up to the amount of the purchase price which each has paid or the amount of tax, interest, and penalty owing, whichever is the lesser. In this example, B is liable for \$5,000, the lesser amount of B's purchase price (\$5,000) and the amount of tax which A owes (\$10,000); C is liable for \$10,000, since purchase price and tax owed are equal; and D is liable for \$10,000, the lesser amount of tax owed (\$10,000) and D's purchase price (\$30,000). The department can proceed against any one, two, or all three of the immediate successors up to the amount of tax which each owes, as it chooses.

b. *Purchase of differing places of business.* If one person owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

**12.14(3) "Sale of a retailer's business" characterized.** Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel*, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty

for the sale of any type of tangible personal property constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

**12.14(4)** *"Good faith" characterized.* An immediate successor to a retailer has purchased the retailer's business or stock of goods "in good faith" if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists. The list of situations is exclusive:

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid; or

b. The immediate successor has taken "in good faith" a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase. Immediate successors should not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor should request a written statement to this effect. For information regarding delinquent tax, interest, or penalty and tax liens write to: Collections Section Supervisor, Iowa Department of Revenue, P.O. Box 10471, Hoover State Office Building, Des Moines, Iowa 50306. A "certified statement" from a retailer is a statement the truth of which is attested to before a notary public or other officer authorized to take oaths. A certified statement has been taken from a retailer "in good faith" if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer's statement was false or no reason to question the truth of the retailer's statement.

This rule is intended to implement Iowa Code section 421.28.

**701—12.15(422,423) Officers and partners—personal liability for unpaid tax.** If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

**12.15(1)** *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws,
- b. The duties which various officers have assumed in practice,
- c. Which officers are empowered to sign checks for the corporation,
- d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

**12.15(2)** *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled

and is not open to future adjustment. The usual consumer installment contract is a “note receivable” rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

**12.15(3) *Beginning date of personal liability.*** Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

**701—12.16(422) Show sponsor liability.** Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term “similar event” is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. “Good faith” may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

**701—12.17(422) Purchaser liability for unpaid sales tax.** For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

**701—12.18(423) Biodiesel production refund.** A refund of sales or use tax is available for certain producers of biodiesel for calendar years 2012 to 2014.

**12.18(1) *Qualifications for the refund.*** A biodiesel producer must meet the following criteria to be eligible for the refund.

*a.* The producer must be engaged in the manufacture of biodiesel and have registered with the United States Environmental Protection Agency as a manufacturer in accordance with the requirements of 40 CFR Part 79.4.

*b.* The biodiesel produced must be for use in biodiesel blended fuel in accordance with Iowa Code section 214A.2.

*c.* The biodiesel must be produced in Iowa.

**12.18(2) *Calculation of the refund.***

*a.* The refund is calculated by multiplying the total number of gallons produced by the biodiesel producer in this state during each quarter of the calendar year by the following rate:

- (1) For the calendar year 2012, three cents.
- (2) For the calendar year 2013, two and one-half cents.
- (3) For the calendar year 2014, two cents.

*b.* The refund is calculated on the first 25 million gallons of biodiesel produced at each facility during the calendar year. No refund will be allowed on gallons produced in excess of 25 million at a

facility during each of the calendar years 2012 to 2014. No refund will be allowed for gallons produced at a facility on or after January 1, 2015.

**12.18(3) Claiming the tax credit.** The refund shall be computed after subtracting any amount of sales or use tax imposed and paid upon purchases made by the biodiesel producer. The biodiesel producer must file and report the amount of sales or use tax upon purchases made during each calendar year quarter from 2012 to 2014 by filing a quarterly sales or use tax return. The biodiesel producer must then file Form IA 843, Claim for Refund, for each calendar quarter and report all of the following:

- a. The amount of biodiesel produced during the quarter at each facility.
- b. The calculation of the biodiesel production refund.
- c. The amount of sales or use tax paid upon purchases during the quarter.
- d. The amount of biodiesel production refund requested.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2012. The producer owes \$10,000 of Iowa consumers use tax based on purchases made during the first quarter of 2012. The producer will file an Iowa consumers use tax return and report \$10,000 of tax due, but this amount will not be paid with the return. The producer will also file Form IA 843, Claim for Refund, to request a refund of \$140,000 for the first quarter of 2012. This amount is calculated by multiplying 5 million gallons times three cents, or \$150,000, less the \$10,000 of Iowa consumers use tax due.

This rule is intended to implement Iowa Code section 423.4 as amended by 2011 Iowa Acts, Senate Files 531 and 533.

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◊ Two or more ARCs



TITLE V  
INDIVIDUALCHAPTER 38  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—38.1(422) Definitions.**

**38.1(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.

**38.1(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.

**38.1(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.

**38.1(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.

**38.1(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.

**38.1(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.

**38.1(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.

**38.1(8)** The term “*responsible party*” shall have the same meaning as withholding agent as defined in Iowa Code section 422.4. A withholding agent includes an officer or employee of a corporation or association, or a member or employee of a partnership, who has the responsibility to perform acts covered by Iowa Code section 422.16. As of July 1, 1993, withholding agent also includes a member or a manager of a limited liability company who has the responsibility to perform acts covered by Iowa Code section 422.16 as amended by 1994 Iowa Acts, Senate File 2057. An individual who is a “responsible party” by law cannot shift that responsibility to someone else by attempting to delegate the responsibility to another corporate officer or employee.

Every business which is an employer must have some person who has the duty of withholding and paying those taxes which the law requires an employer to withhold and pay. There may be more than one person, but there must be at least one. The fact that any individual may not have been the only responsible person would not excuse that person from the responsibility of paying withholding taxes. Any withholding agent as defined in this subrule, who knowingly violates the statutory provisions of Iowa Code section 422.16, will be held liable for the tax due: *Pacific National Insurance Co. v. United States*, 1970, 9th Cir., 422 F.2d 26, cert. denied, 398 U.S. 937; *R. E. Dougherty v. United States*, 1971, 327 F. Supp. 202; *Gefen v. United States*, 5th Cir. 1968, 400 F.2d 476.

**38.1(9)** *Domicile*. Rescinded IAB 5/10/95, effective 6/14/95.

This rule is intended to implement Iowa Code sections 422.3, 422.4 and 422.16.

## **701—38.2(422) Statute of limitations.**

### **38.2(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.

**38.2(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.

**38.2(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.

#### **701—38.3(422) Retention of records.**

**38.3(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).

**38.3(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]

**701—38.4(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.

#### **701—38.5(422) Jeopardy assessments.**

**38.5(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.

**38.5(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.

**701—38.6(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.

**701—38.7(422) Power of attorney.** For information regarding power of attorney, see rule 701—7.34(421).

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—38.8(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.

**701—38.9(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 38.9(4) applies to taxes required to be withheld on or after January 1, 1990.

**38.9(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.

**38.9(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 38.9(1) "a" as if the officer or employee applied as the withholding agent as an individual.

**38.9(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.

**38.9(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.

**701—38.10(422) Indexation.** Acts of the Sixty-ninth General Assembly, 1981 Regular Session, chapter 132, and Iowa Code section 422.5 provide for the adjustment of the tax brackets and civil service annuity exclusion 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.

**38.10(1) to 38.10(17)** Rescinded IAB 2/18/04, effective 3/24/04.

This rule is intended to implement Iowa Code sections 422.4 and 422.21.

**701—38.11(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]

**701—38.12(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]

**701—38.13(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.

**38.13(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. “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.

**38.13(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 38.13(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.

**701—38.14(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 38.14(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.

**38.14(1) Incomes to be included in information returns.** The entities described in rule 701—38.14(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.

**38.14(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]

**701—38.15(422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse.** A husband and wife are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where they file separately on the combined return form.

However, effective for tax years beginning on or after January 1, 1994, a married person who meets the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for a substantial understatement of tax that is attributable to grossly erroneous items of the other spouse. For purposes of determining if an individual is an innocent spouse for state income tax purposes, the provisions in Section 6015 of the Internal Revenue Code will be followed as well as federal court cases, letter rulings, and revenue rulings which deal with innocent spouse. In addition, for tax years beginning on or after January 1, 2002, the provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes. The following are the criteria that must be considered for purposes of determining if an individual is an innocent spouse for Iowa income tax purposes:

1. Understatement of tax attributable to grossly erroneous items of the other spouse. An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. The understatement must be entirely attributable to grossly erroneous items of one spouse in order for the other spouse to be eligible for status as an innocent spouse. As an innocent spouse, the individual will not be liable for the substantial understatement of tax of the other spouse. The tax liability attributable to the understatement is computed by adding penalties and interest that accrued by the date of the deficiency notice. Grossly erroneous items may include any omission from gross income such as income from embezzled funds. Grossly erroneous items may also include deductions or Iowa tax credits that are without factual or legal foundation.

2. Filing status for return with an innocent spouse. For state income tax purposes, a married taxpayer filing a return with a spouse can qualify as an innocent spouse only if the taxpayers file a joint return or file separately on the combined return form. A married taxpayer who files a separate state return will not be eligible for innocent spouse status.

3. Innocent spouse must establish lack of knowledge of other spouse's substantial understatement. Innocent spouse relief applies only if the individual claiming to be an innocent spouse can establish that in signing the state return, the individual did not know and had no reason to know that there was a substantial understatement of tax. The innocent spouse's lack of knowledge must exist until the time the return is filed and not just until the end of the year (or period) covered by the return. The U.S. Tax Court has provided that the standard for determining if a taxpayer had reason to know of an omission is whether a reasonable person under the particular circumstances at the time of signing the return could be expected to know of the omission.

In many cases in which innocent spouse relief is sought, the following factors play a role: business background or education of person claiming innocent spouse relief, involvement in family financial affairs by the person claiming innocent spouse relief, involvement in the family business or the transaction giving rise to the understatement by the person claiming innocent spouse relief, whether or not there were lavish or unusual expenditures in the family or increase in standard of living of the family and knowledge of embezzlement activities of the other spouse.

4. Whether or not it would be equitable to hold the innocent spouse for the substantial understatement. Innocent spouse relief applies only if, taking into account all facts and circumstances, it would be inequitable to hold the claimed innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement. Factors taken into account in determining whether it is inequitable to hold a spouse liable for a tax deficiency include whether the spouse seeking relief has been deserted, divorced, separated, or widowed.

Another important factor in determining equitable treatment for the person claiming innocent spouse relief is whether the person received a benefit attributable to the substantial understatement of taxes. The fact that the spouse received a benefit in the nature of "ordinary support" does not support a finding of significant benefit to deny the spouse relief. In addition, ordinary family support may include maintaining an affluent lifestyle if the standard of living is not enhanced by the tax understatement.

Where the taxpayer participated in the financial affairs of the other spouse and enjoyed the benefits from the activities of the other spouse, innocent spouse relief will not be granted.

5. Time period for requesting innocent spouse relief. For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates

collection action on an income tax deficiency or assessment against the person claiming innocent spouse relief.

This rule is intended to implement Iowa Code section 422.21 as amended by 2002 Iowa Acts, House File 2116.

**701—38.16(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.

**701—38.17(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.

**38.17(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.

**38.17(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.

**38.17(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—40.76(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—42.5(422).

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.

**38.17(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]

**701—38.18(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.

**701—38.19(422) Indication of dependent child health care coverage on tax return.** For tax years beginning on or after January 1, 2008, but before January 1, 2010, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in 701—subrule 42.2(1), paragraph "c," is claimed. For tax years beginning on or after January 1, 2008, but before January 1, 2010, it is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return. For tax years beginning on or after January 1, 2010, it is mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent. The Iowa return will not be considered complete until the indication of the presence or absence of health care coverage for each dependent is made on the return.

**38.19(1) Definition of health care coverage.** Health care coverage includes the following:

- a. Private health care coverage provided through an employer, a relative's employer, or through a union.
- b. Private health care coverage purchased by an individual from a private company.
- c. Government health care coverage provided through the state Medicaid program set forth in Iowa Code chapter 249A, or the HAWK-I (healthy and well kids in Iowa) program set forth in Iowa Code chapter 514I.
- d. Government health care coverage provided by the military including the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS) and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

*e.* Government health care coverage provided by the United States Department of Health and Human Services to eligible American Indians under the Indian Health Service program.

**38.19(2) Notification to the taxpayer.** If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer's income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also provide the address for a Web site which has an online application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The letter will also include the telephone number to call to request a paper application. The taxpayer must submit the application to the Iowa department of human services within 90 days of receipt of the enrollment information from the department of revenue. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

**38.19(3) Reporting requirements.** The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

*a.* Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in 701—subrule 42.2(1), paragraph “*c.*”

*b.* The number of Iowa families, by income level, who claim the personal exemption credit and whether they indicated the presence or absence of health care coverage for their dependent children.

*c.* The number of Iowa families, by income level, claiming the personal exemption credit who received enrollment information from the department of revenue and who subsequently applied and were enrolled in either the Medicaid or HAWK-I program.

This rule is intended to implement Iowa Code section 422.12M as amended by 2009 Iowa Acts, Senate File 389, section 15.

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<sup>◇</sup> Two or more ARCs

CHAPTER 40  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—40.1(422) Net income defined.** Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.2(422) Interest and dividends from federal securities.** For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

“Obligations of the United States” are those obligations issued “to secure credit to carry on the necessary functions of government.” *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the “borrowing” and “supremacy” clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor’s primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department’s interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

**40.2(1)** Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation
- b. Territorial obligations:*
  1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
  2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
  3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
  4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).
- c. Federal agency obligations:*
  1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
  2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
  3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
  4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
  5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
  6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
  7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
  8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
  9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
  10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
  11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
  12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
  13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
  14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
  15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).
  - Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
  - Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
  - Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
  - Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
  - Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).
17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).
18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).
19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).
20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).
21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).
22. Treasury Investment Growth Receipts.
23. Certificates on Government Receipts.

**40.2(2)** Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

- a. *Federal agency obligations:*
  1. Federal or State Savings and Loan Associations
  2. Export-Import Bank of the United States
  3. Building and Loan Associations
  4. Interest on federal income tax refunds
  5. Postal Savings Account
  6. Farmers Home Administration
  7. Small Business Administration
  8. Federal or State Credit Unions
  9. Mortgage Participation Certificates
  10. Federal National Mortgage Association
  11. Federal Home Loan Mortgage Corporation (Freddie Mac)
  12. Federal Housing Administration
  13. Federal National Mortgage Association (Fannie Mae)
  14. Government National Mortgage Association (Ginnie Mae)
  15. Merchant Marine (Maritime Administration)
  16. Federal Agricultural Mortgage Corporation (Farmer Mac)
- b. *Obligations of international institutions:*
  1. Asian Development Bank
  2. Inter-American Development Bank

3. International Bank for Reconstruction and Development (World Bank)

c. *Other obligations:*

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 514 US —, 130 L.Ed.2d 470, 115 S.Ct. — (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]

**701—40.3(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 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 467A.22 (transferred to Iowa Code section 161A.22 in 1993 Iowa Code).
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. Iowa Alcoholic Beverage Control Act - Warehouse project: Bonds issued under Iowa Code section 123.159.
8. County Health Center: Bonds issued under Iowa Code section 331.441(2) “c”(7).
9. Iowa Finance Authority, Sewage treatment and drinking water facilities financing: Bonds issued under Iowa Code section 220.131(6) (transferred to Iowa Code section 16.131(6) in 1993 Iowa Code).
10. Agricultural Development Authority, Beginning farmer loan program: Bonds issued under Iowa Code section 175.17.
11. Iowa Finance Authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
12. Iowa Finance Authority, E911 Program notes and bonds: Bonds issued under Iowa Code section 477B.20(6). (Transferred to Iowa Code section 34A.20(6) in 1993 Iowa Code.)
13. Quad Cities Interstate Metropolitan Authority Bonds: Bonds issued under Iowa Code section 330B.24. (Transferred to Iowa Code section 28A.24 in 1993 Iowa Code.)
14. Iowa Finance Authority, Municipal Investment Recovery Program: Bonds issued under Iowa Code section 220.173(4). (Transferred to Iowa Code section 16.173(4) in 1993 Iowa Code.)
15. Prison Infrastructure Revenue Bonds: Bonds issued under Iowa Code section 16.177(8).
16. Government Flood Damage Program Bonds: Bonds issued under Iowa Code section 16.183(4).
17. Iowa sewage treatment bonds: Bonds issued under Iowa Code section 16.131(6).

18. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.

19. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).

20. Regents institutions medical and hospital buildings at University of Iowa bonds: Bonds issued under Iowa Code section 263A.6.

21. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.

22. Iowa higher education loan authority: Obligations issued by the authority on or after July 1, 2000, pursuant to either division of Iowa Code chapter 261A as authorized in Iowa Code section 261A.27.

23. Vision Iowa program: Bonds issued on or after July 1, 2000, upon request of the vision Iowa board pursuant to subsection 8 of Iowa Code section 12.71.

24. Honey Creek premier destination park bonds: Bonds issued under Iowa Code Supplement section 463C.12(8).

25. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under 2006 Iowa Acts, chapter 1179, section 70.

26. Iowa jobs program bonds: Bonds issued under 2009 Iowa Acts, Senate File 376, section 1.

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*, 514 US —, 130 L.Ed. 2d 470, 115 S.Ct. — (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 sections 12.71, 261A.27, 357A.15, 422.7, 463C.12 and Iowa Code Supplement section 12.87.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.4(422) Certain pensions, annuities and retirement allowances.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.5(422) Military pay.**

**40.5(1)** Rescinded IAB 6/3/98, effective 7/8/98.

**40.5(2)** For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

*a.* When universal compulsory military service is reinstated by the United States Congress. “Compulsory military service” is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

*b.* When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.  
[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.6(422) Interest and dividend income.** This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.7(422) Current year capital gains and losses.** In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

**701—40.8(422) Gains and losses on property acquired before January 1, 1934.** When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.9(422) Work opportunity tax credit and alcohol fuel credit.** Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol fuel 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 after September 30, 1996, and before September 1, 2011. The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement Iowa Code section 422.7.

**701—40.10(422) Exclusion of interest or dividends.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.11(422) Two-earner married couple deduction.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.12(422) Income from partnerships or limited liability companies.** Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

**701—40.13(422) Subchapter “S” income.** Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation’s income to the shareholders, the corporation’s income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident

and nonresident shareholders shall report their share of the corporation's net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission*, 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

**701—40.14(422) Contract sales.** Interest derived as income from a land contract is intangible personal property and is assignable to the recipient's domicile. Gains received from the sale or assignment of land contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the

taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the \$1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same \$3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to \$1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than \$1,500 and the other spouse has a capital loss greater than \$1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the \$3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of \$3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a \$3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of \$3,000, which was the maximum loss they could claim, although they had aggregate capital losses of \$8,000. The husband had a net capital loss of \$6,000 and the wife had a net capital loss of \$2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of \$1,500, since each spouse had a capital loss of up to \$1,500. The husband had a net capital loss carryover of \$4,500 and the wife had a net capital loss carryover of \$500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of \$2,500. The husband had a net capital gain of \$7,500 and the wife had a net capital loss of \$10,000. The wife claimed a net capital loss of \$10,000 on her separate Iowa return, while the husband reported a net capital gain of \$7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of \$3,000. The wife had a net capital loss of \$800 and the husband had a net capital loss of \$2,500. The wife claimed a \$800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of \$2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of \$300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

**40.15(1)** *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

**40.15(2)** *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

*a.* Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

*b.* Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

**40.15(3)** *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

*a.* Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

*b.* Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

**40.15(4)** *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as

evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs “a” or “b” of this subrule and consideration of paragraphs “c,” “d,” and “e” of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

*a.* Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

*b.* Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

*c.* Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

*d.* Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

*e.* Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 8356B, IAB 12/2/09, effective 1/6/10]

**701—40.16(422) Income of nonresidents.** Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 40.14(422).

**40.16(1) Nonresidents exempt from paying tax.** See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph “c,” and 701—subrule 39.5(11), paragraph “b,” do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

**40.16(2) Compensation for personal services of nonresidents.** The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the

gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a merchant marine company, or a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

**40.16(3)** *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

**40.16(4)** *Apportionment of business income from business carried on both within and without the state.*

*a.* If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

*b.* The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

*c.* Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

*d.* If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

**40.16(5)** *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.5(422):

EXAMPLE A - An Illinois resident is a laborer at a factory in Davenport. A \$50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn \$600 in interest income from the Iowa credit union account in 1983. The interest income would

not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

EXAMPLE B - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn \$200 in interest income from the checking account in 1982. The plumber will have a net income of \$25,000 from the plumbing business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

EXAMPLE C - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn \$1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

EXAMPLE D - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

EXAMPLE E - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

EXAMPLE F - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn \$550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

EXAMPLE G - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state.

**40.16(6) *Distributive shares of nonresident partners.*** When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

**40.16(7) *Interest and dividends from government securities.*** Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in

determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

**40.16(8)** *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

**40.16(9)** *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

*a. Capital gains from sales or exchanges of stock in C corporations and S corporations.* When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

*b. Capital gains from sales or exchanges of interests in partnerships.* When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to

be localized or “sourced” at the situs of the partnership’s activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com’n.*, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership’s activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner’s interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph “a” of this subrule.

*c. Capital gains from sales or exchanges of sole proprietorships.* When a nonresident sells or exchanges the individual’s interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

*d. Capital gains from sales or exchanges of interests in limited liability companies.* Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph “b” of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph “a” of this subrule.

*e. Taxation of corporate liquidations.* As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder’s pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review*, 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder’s basis in the stock. *Id.* Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder’s liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

*f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity.* In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs “a” through “e” of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of the portion of net capital losses that exceed \$3,000.

**40.16(10)** *Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities.* Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.17(422) Income of part-year residents.** A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.
2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

**701—40.18(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

**40.18(1)** *Treatment of federal income taxes.*

*a.* Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

- (1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.
- (2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.
- (3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

*b.* Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

**40.18(2)** *Nonresidents doing business within and without Iowa.* If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

**40.18(3) Loss carryback and carryforward.** The net operating loss attributable to Iowa as determined in rule 40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

**40.18(4) Loss not applicable.** No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

**40.18(5) Special adjustments applicable to net operating losses.** Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

**40.18(6) Distinguishing business or nonbusiness items.** In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

**40.18(7) Examples.** The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

Gross income from retail sales business		\$125,000
Interest income from federal securities		2,000
Salary from part-time job		12,500
Individual A's federal return showed the following deductions:		
Business deductions (retail sales)		\$150,000
Itemized (nonbusiness) deductions:		
Interest	\$400	
Real estate tax	600	
Iowa income tax	800	\$ 1,800

Individual A paid \$3,000 federal income tax during the year which consisted of \$2,500 federal withholding (business) and a \$500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail Sales	\$125,000	\$125,000
Interest income-federal securities	2,000	2,000
Salary	12,500	12,500
Subtotal	<u>\$139,500</u>	<u>\$139,500</u>
Deductions:		
Business	\$150,000	\$150,000
Itemized deductions	1,800	1,800
(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	1,000	-
(Loss) per return	<u>(\$ 16,500)</u>	
Computed Iowa NOL		<u>(\$ 15,000)</u>

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

b. Individual B had the following items of income for the taxable year:

Gross income from restaurant business	\$300,000
Wages	12,000
Business long-term capital gain @100%	1,000
Municipal bond interest (nonbusiness)	1,000
Federal tax refund of prior year taxes	500
Iowa tax refund of prior year taxes	100

Individual B's federal return showed the following deductions:

Business deductions from restaurant	\$333,000
Itemized deductions:	

Interest (nonbusiness)	\$590	
Real estate tax (nonbusiness)	780	
Iowa income tax*	520	
Alimony (nonbusiness)	600	
Union dues (business)	100	2,590

\*Iowa estimated payments totaled \$220 of which \$70 related to nonbusiness income and \$150 related to business capital gains and business profits. \$300 in Iowa tax was withheld from his wages.

Individual B paid \$2,000 in federal income taxes during the tax year. \$1,500 of this amount was withholding on wages and \$500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500(a)	1,000(a)
Iowa refund	100	100
Subtotal	\$312,600	\$313,100
Deductions:		
Business	\$333,000	\$333,000
Itemized deductions	2,590	575(b)
(Loss) per federal	(\$ 22,990)	
Computed net operating loss		(\$ 20,475)

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of \$100 for union dues, \$450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to \$25. The only nonbusiness income is 25 percent of the \$100 Iowa refund.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500	1,000
Municipal bond interest	1,000	1,000
Federal refund	500	500
Subtotal	\$314,000	\$314,500

Deductions:		
Business	\$333,000	\$333,000
Federal tax	2,000	2,000
Itemized deductions	<u>2,070(c)</u>	<u>1,225(d)</u>
(Loss) per return	<u>(\$ 23,070)</u>	
Computed Iowa NOL		<u>(\$ 21,725)</u>

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of \$100 for union dues and nonbusiness deductions to the extent of nonbusiness income of \$1,125. Nonbusiness income includes \$1,000 of municipal bond interest and 25 percent (\$125) of the federal tax refund.

**40.18(8)** *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

Category	All Source Income	Iowa Source Income
Wages	\$20,000	\$20,000
Interest	5,000	0
Rental income	5,000	5,000
Business loss	(50,000)	(10,000)
Iowa net income (loss)	<u>(\$20,000)</u>	<u>\$15,000</u>

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer’s Iowa source income was not negative. The taxpayer’s all source loss of (\$20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer’s all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of \$1,000 in 1983. The refund was from the taxpayer’s 1981 federal return where the taxpayer’s Iowa income was 20% of the total income. \$2,000 of federal income tax was withheld from the taxpayer’s Iowa wages in 1982. The taxpayer had \$10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in 1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

Category	All Source Income	Iowa Source Income
Wages	\$60,000	\$10,000
Interest	3,000	0
Rental income	5,000	5,000
Farm income loss	(30,000)	(30,000)
Capital gain	2,000	2,000
Total incomes	<u>\$40,000</u>	<u>(\$13,000)</u>

The taxpayer’s Iowa source loss of (\$13,000) was decreased by \$200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by \$3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of \$2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer’s itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

Iowa source net loss . . . . .	(\$13,000)
Iowa portion of federal refund . . . . .	200
Federal tax withheld on Iowa wages . . . . .	(2,000)
Capital gain deduction . . . . .	<u>3,000</u>
Total	<u>(\$11,800)</u>

The taxpayer’s net operating loss deduction available for carryback/carryforward to another tax year is (\$11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph “a” and paragraph “b” below:

a. *Application of net operating losses to tax years beginning prior to January 1, 1982.* In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on

or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of (\$15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was \$14,000. The taxpayer had a net capital loss of \$3,000 in 1979. Because the taxpayer's 1979 taxable income of \$14,000 was \$1,000 less than the NOL deduction, the taxable income was increased by \$1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

*b. Application of net operating losses to tax years beginning on or after January 1, 1982.* In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of \$11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

Category	All Source Income	Iowa Source Income
Wages	\$ 60,000	\$ 20,000
Interest	3,000	0
Rental income	10,000	3,000
Farm income	25,000	25,000
Capital gain	2,000	2,000
Net operating loss carryforward	—	(11,800)
Iowa net income	\$100,000	\$ 38,200

The Iowa source income of \$38,200 after reduction by the NOL carryforward is divided by the all source income of \$100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of \$7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of \$4,551. This credit is \$869 greater than the nonresident/part-year credit of \$3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

**40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming.** Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

**701—40.19(422) Casualty losses.** Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

**701—40.20(422) Adjustments to prior years.** When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

**701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed \$20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs “f” and “g,” apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

**40.21(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**40.21(2)** The term “small business” means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

*a.* The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

b. The small business shall not have more than \$1 million in annual gross revenues, or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

#### **40.21(3) Definitions.**

a. The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

*f.* The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

*g.* The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**40.21(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**40.21(5)** The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

**40.21(6)** If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, House Files 287 and 759.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

#### **701—40.22(422) Disability income exclusion.**

**40.22(1)** Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of \$100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

**40.22(2)** In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude \$5,200 of income received on account of disability.

**40.22(3)** There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer’s federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds \$15,000. In the case of a married couple, both spouses’ incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds \$15,000. The taxpayers’ disability income exclusion is eliminated when the taxpayers’ federal adjusted gross income is equal to or exceeds \$20,200. The deduction of the taxpayers’ disability income exclusion because the taxpayers’ federal adjusted gross income is greater than \$15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received \$8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was \$2,500 and the wife's income was \$7,500.

Of the \$8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only \$4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is \$100.

However, the \$4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds \$15,000. In this example, the taxpayer's federal adjusted gross income is \$18,000, which exceeds \$15,000 by \$3,000. Therefore, the amount eligible for exclusion of \$4,000 must be reduced by \$3,000. This gives the taxpayers an exclusion of \$1,000.

**40.22(4)** For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

**40.22(5)** Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

**40.22(6)** The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

**701—40.23(422) Social security benefits.** For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

**40.23(1)** *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received \$6,000 in social security benefits and the wife received \$3,000 in social security benefits. \$2,000 of the social security benefits was taxable on the federal return.

The \$2,000 in taxable social security benefits is allocated to the spouses on the following basis:

$$\begin{array}{r} \text{Husband} \\ \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

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:

$$\begin{array}{l} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{l} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{l} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

**40.23(2)** *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: (a) \$32,000 if married and a joint federal return was filed, (b) \$0 if married and separate federal returns were filed by the spouses and (c) \$25,000 for individuals who filed federal returns and used a filing status other than noted in (a) and (b).

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse any time in 1994). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040. 11. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

**40.23(3)** *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

Calendar years 2007 and 2008	32%
Calendar year 2009	43%
Calendar year 2010	55%
Calendar year 2011	67%
Calendar year 2012	77%
Calendar year 2013	89%

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse anytime during the year). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10. 11. \_\_\_\_\_
12. Multiply line 11 by applicable exclusion percentage. 12. \_\_\_\_\_
13. Taxable social security benefits. Subtract line 12 from line 11. 13. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

**40.23(4)** *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and

701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

**701—40.24(99E) Lottery prizes.** Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

**701—40.25(422) Certain unemployment benefits received in 1979.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.26(422) Contributions to the judicial retirement system.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.27(422) Incomes from distressed sales of qualifying taxpayers.** For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

**40.27(1) Qualifications that must be met for transactions to be considered distressed sales.** There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

*a.* The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

*b.* Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

*c.* The taxpayer's net worth at the end of the tax year was less than \$75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

**40.27(2) Losses from distressed sale transactions of qualifying taxpayers.** Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that

the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

**701—40.28(422) Losses from passive farming activities.** Rescinded IAB 2/18/04, effective 3/24/04.

**701—40.29(422) Intangible drilling costs.** For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

**701—40.30(422) Percentage depletion.** For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.31(422) Away-from-home expenses of state legislators.** For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax.** For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry.** For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of \$20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

**701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans.** For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

**701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program.** Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

**701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board.** Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

**701—40.38(422) Capital gain deduction or exclusion for certain types of net capital gains.** For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(2) to 40.38(8) are excluded in the computation of net income for qualified individual taxpayers. This includes net capital gains from the sales of real property, sales of assets of a

business entity, sales of certain livestock of a business, sales of timber, liquidation of assets of certain corporations, and certain stock sales which are treated as acquisition of assets of a corporation. "Net capital gains" means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. A business includes any activity engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. Subrule 40.38(1) describes the criteria for material participation which are required for the exclusion of certain capital gains related to the sale of real property and the sale of assets of business entities. Subrule 40.38(9) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

**40.38(1)** *Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged.* If the taxpayer has regular, continuous and substantial involvement in the operations of a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the federal tax regulations for material participation in 26 CFR §1.469-5 and §1.469-5T, for the ten years prior to the date of the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether a particular taxpayer has material participation in a business, participation of the taxpayer's spouse in a business must also be taken into account. The spouse's participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer or if the spouse has no ownership interest in the business. The activities of other family members, employees, or consultants are not attributed to the taxpayer to determine material participation.

*a.* Work done in connection with an activity shall not be treated as participation in the activity if such work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

*b.* Work done in an activity by an individual in the individual's capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business.

*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 the facts and circumstances test in subparagraph 40.38(1)“e”(7):

(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.

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 maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in 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. Detailed records should be kept by the taxpayer, on as close to a daily basis as possible, to verify that the material participation test has been met because the burden is on the taxpayer to demonstrate 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.

**40.38(2) Net capital gains from the sale of real property used in a business.** Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent that the owner had held the real property in the business for ten or more years and had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1). It is not required that the property be located in Iowa for the owner to qualify for the deduction.

*a.* Meaning of the term “held” for purposes of this rule. For capital gains reported for tax years ending prior to January 1, 2006, the term “held” is defined as “owned.” *James and Linda Bell*, Decision of the Administrative Law Judge, Docket No. 01DORF013, January 15, 2002, and *David V. and Julie K. Gorsche v. Iowa State Board of Tax Review*, Case No. CVCV 8379, Polk County District Court, May 5, 2011. Therefore, the property held by the taxpayer must have been owned by the taxpayer for ten or more years to meet the time held requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term “held” is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant to Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the time held requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

*b.* Sale to a lineal descendant. For purposes of taxation of capital gains from the sale of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(3).

*c.* In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had held and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

*d.* Installments received in the tax year from installment sales of businesses are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011

would qualify for the exclusion if the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years at the time of the sale in 2007.

*e.* Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction except under the specific circumstances of a liquidation described in subrule 40.38(7).

*f.* Capital gains from the sale of real property held for ten or more years for speculation but not used in a business do not qualify for the capital gain deduction.

*g.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and held ABC Company for more than ten years at the time that 500 acres of the land were sold for a capital gain of \$100,000 in 2011. The capital gain recognized in 2011 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and time held requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company, which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1990. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 2011, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the capital gain passed through to John Smith and \$25,000 of the capital gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time held and material participation requirements. John Smith could not exclude the \$25,000 capital gain since, although he had met the time held requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for a taxpayer's sale of real estate from a business to a lineal descendant of the taxpayer as is described for the sale of business assets in subrule 40.38(3).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been held for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 2004 and farmed that land until the land was sold in 2011 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 2005, formed an S corporation, and included the land in the assets of the S corporation. The land was sold in 2011 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized from the land sale a capital gain of \$15,000, which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had held the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because, although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and in which he had materially participated for 20 years. There were two tracts of farmland in the farming business. In 2011, he sold one tract of farmland in the farming business that he had held for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 2011 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey held the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain deduction. The deduction is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain deduction since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son Joseph after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 1994, when Ralph died. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain deduction under Iowa law since he materially participated for ten or more years and the capital gain was reported for a tax year ending on or after January 1, 2006.

**40.38(3)** *Net capital gains from the sale of assets of a business by an individual who had held the business for ten or more years and had materially participated in the business for ten or more years.* Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent that the individual had held the business for ten or more years and had materially participated in the business for ten or more years. In addition to the time held and material participation qualifications for the capital gain deduction, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

*a.* For purposes of this subrule, the phrase "substantially all of the tangible personal property or the service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

*b.* If the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. If the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten or more years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten or more years prior to the sale of the assets of the business.

c. In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

d. For the purposes of this subrule, the term “service of the business” means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, a retail business, or a service business, such as a law firm or an accounting firm.

e. When the business held by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer is not required to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income. The term “lineal descendant” means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

f. In situations in which substantially all of the tangible personal property or the service of the business was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had held the business for ten or more years and had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale. The criteria for material participation in a business may be found in subrule 40.38(1).

g. Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if, at the time of the sale in 2007, the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years.

h. Sale of capital stock of a corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain deduction, whether the corporation is a C corporation or an S corporation.

i. Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain deduction. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

j. The sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the business or unless the activity or distinct part of a business represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, nonunitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exclusion of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

k. The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 2011, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 2011 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 2011, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had held the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 2011 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 2011 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. At the time of sale, the trucks were valued at \$30,000, which was about 10 percent of the fair market value of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 2011 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop that were in the same building and were part of a sole proprietorship owned only by Mr. Bennet, who had held and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 2011 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 2011 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 2011 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which owned a chain of six gas stations in an Iowa city. In 2011, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain of \$30,000 from the sale. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 2011 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year time held and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had held both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records. In 2011, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 2011 because the cafe and fast-food restaurant were considered to be separate and distinct nonunitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2008, Mr. Jackson transferred 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust was reported on Mr. Jackson's individual income tax return. In 2011, the assets

of Jackson Products Corporation were sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

**40.38(4)** *Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sales of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes qualify for the capital gain deduction if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

a. Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR §1.1231-2.

b. In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

c. Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes, are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

d. Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

e. A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. Gross income from farming or ranching includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. Gross income from farming or ranching also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 2011 tax year, gross income from farming or ranching includes the total of the amounts from line 9 or line 50 of Schedule F and line 7 of Form 4835, Farm Rental Income and Expenses, plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, dairy, or sporting purposes, as shown on Form 4797, Sale of Business Property. In the case of an individual's returns for tax years beginning after 2011, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses will be considered for the capital gain deduction.

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether the taxpayers received more than half of their gross income from farming or ranching. However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether that spouse has more than 50 percent of gross income from farming or ranching operations.

EXAMPLE. Bob Deen had a cattle operation that owned black angus cattle in the operation for breeding purposes. In 2011, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 2011 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

**40.38(5)** *Net capital gains from sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months from the date of acquisition qualify for the capital gain deduction, if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, or reptiles. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR §1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(4).

*a.* The procedure in subrule 40.38(4) for determining whether more than one-half of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

*b.* In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held for 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer is not required to have more than one-half of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain deduction.

*c.* Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains meet the qualifications for the deduction on the basis of having more than one-half of the gross income in the tax year from farming or ranching operations.

*d.* Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

**40.38(6)** *Net capital gains from sales of timber held by the taxpayer for more than one year.* Capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gain deduction. In all of the following examples of circumstances where gains from sales of timber qualify for capital gain treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, cross ties, and other wood products. Timber eligible for the capital gain deduction does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer owned or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 2011	\$400,000
Adjusted basis for depletion	<u>– \$100,000</u>
Capital gain on cutting of timber	\$300,000

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

*a.* Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term “evergreen trees” is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer’s farm, there is no sale until the tree is cut. However, evergreen trees sold in a live state do not qualify for capital gain treatment.

*b.* Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber. Additional information about gains and losses from the sale of timber is included under 26 CFR §1.631-1 and §1.631-2.

*c.* Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain deduction.

*d.* Capital gains from the sale of timber by a C corporation do not qualify for the capital gain deduction.

**40.38(7)** *Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes.* Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain deduction. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

**40.38(8)** *Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes.* Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had held an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. The burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

**40.38(9)** *Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried.* The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

*a.* The capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 2011 return showing a net loss of \$12,000. On this return, Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding livestock, other than cattle or horses, held for 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000

capital gain deduction is not allowed in the computation of the net operating loss deduction for 2011 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 2011 is \$9,000.

*b.* In the case of net operating losses which are carried back to a tax year where the taxpayer has claimed the capital gain deduction, the capital gain deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 2011. Mr. Brown elected to carry back the net operating loss to his 2009 Iowa return. The 2009 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 2011 was applied to an income of \$30,000 for the carryback year.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0073C, IAB 4/4/12, effective 5/9/12]

**701—40.39(422) Exemption of interest from bonds or notes issued to fund the E911 emergency telephone system.** Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the E911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

**701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield.** For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

**701—40.41(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.42(422) Depreciation of speculative shell buildings.**

**40.42(1)** For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

**40.42(2)** On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**40.42(3)** For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27) "c."

This rule is intended to implement Iowa Code section 422.7.

**701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative.** Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2)“a”(2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver’s family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver’s family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives who are related by marriage or adoption. Those licensed health care professionals who are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, audiologists, and other similar licensed health care professionals.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—40.44(422,541A) Individual development accounts.** Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

**40.44(1) Exemption of additions to individual development accounts.** The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

a. The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

**40.44(2) Additions to net income for withdrawals from individual development accounts.** Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

**701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa.** For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

**40.45(1) Definitions.**

*a.* The word “beneficiary” means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

*b.* The term “individual’s documented retirement” means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual’s beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual’s retirement may include: copies of birth certificates or driver’s licenses to establish an individual’s age; copies of excerpts from an employer’s personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual’s disability which could have contributed to a person’s retirement.

*c.* The term “nonresident” applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

**40.45(2) Examples:**

*a.* John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

*b.* Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John’s pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father’s pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

*c.* Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn’t have a documented retirement.

*d.* William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

*e.* Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown's retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

**701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams.** Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual's total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has \$50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, \$5,556 of the compensation would be taxable to Iowa ( $\$50,000 \times 20/180 = \$5,556$ ).

The following subrules include definitions, examples, and other information which clarify Iowa's taxation of nonresident members of professional athletic teams:

**40.46(1) Definitions.**

*a.* The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

*b.* The term "member of a professional athletic team" includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

*c.* The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered. "Total compensation" includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or "bowl" games played by a team, or for the member's selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

*d.* Except as provided in subparagraphs (4) and (5) of this paragraph, the term "duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team's official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Rendering a service

includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach's total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

**40.46(2) Filing composite Iowa returns for nonresident members of professional athletic teams.** Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than \$1,000. See rule 701—48.1(422) about filing Iowa composite returns.

**40.46(3) Examples of taxation of nonresident members of professional athletic teams.**

*a.* Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

b. Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

c. Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

d. Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

e. Assume the same facts as given in paragraph "d," except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

**40.46(4)** *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to 6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.8(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.** For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

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]

**701—40.48(422) Health insurance premiums deduction.** For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar

year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

**701—40.49(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

**701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans.** For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of \$41,000 or more in 1995, that person would have made posttax contributions to IPERS of \$1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The \$1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from

IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the \$1,517 IPERS contribution made in 1995. However, this employee will not be subject to state income tax on the portion of the IPERS benefits received which is attributable to the \$1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

**40.50(1)** *Definitions related to state taxation of benefits from state pension plan.* The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

*a.* For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

*b.* For purposes of this rule, "member" is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

*c.* For purposes of this rule, "beneficiary" is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

*d.* For purposes of this rule, the term "IPERS" means the Iowa public employees retirement system.

*e.* For purposes of this rule, the term "pretax," when the term is applied to a contribution made to a state pension plan during a year from a public employee's compensation, means a contribution to a state pension plan that is not taxed on the employee's income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee's employer and not by the employee so this contribution is not part of the employee's basis in the pension that is not taxed when the pension is received.

*f.* For purposes of this rule, the term "posttax," when the term is applied to a contribution made to a state pension plan during a year from a public employee's compensation, means the contribution is included in the employee's taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee's basis in the pension which is not taxed at the time the pension is received.

**40.50(2)** *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal income tax on the benefits to the extent of the pensioner's or member's recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

**40.50(3)** *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee's contribution to the pension for federal income tax purposes, and the employee's contribution to the pension for state income tax purposes. In situations where the employee's contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual's employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee's state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member's posttax contribution or basis in the pension for federal tax purposes is divided by the member's posttax contribution or basis in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

**40.50(4)** *Examples.*

*a.* A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received \$1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was \$1,690.36. The employee's federal posttax contribution or basis in the pension was \$4,907 and the state posttax contribution or basis was \$7,194. The nontaxable amount of the IPERS benefits for federal income tax was \$104.09 which was calculated by subtracting the federal taxable amount of \$1,690.36 from the gross amount of the benefits of \$1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing \$4,907 by \$7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of \$104.09 was then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of \$152.60. This was the nontaxable amount of the pension for state income tax purposes. When \$152.60 is subtracted from the gross benefits of \$1,794.45 paid in the year, the remaining amount is \$1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

*b.* A state employee retired in July 1995. The retired employee received \$1,881.88 in IPERS benefits in 1996 and \$1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was \$3,130 and the posttax contribution for state income tax purposes was \$3,821. The amount of benefits not taxable for federal income tax purposes was \$91.28 which was computed by subtracting the amount of pension benefits of \$1,790.60 that was

taxable on the federal income tax return from the gross benefits of \$1,881.88 received in 1996. The retiree's federal posttax contribution of \$3,130 to IPERS was divided by the retiree's posttax contribution of \$3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount of IPERS benefits of \$91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of \$111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. \$111.44 is subtracted from the gross benefits of \$1,881.88 received in 1996 which leaves the state taxable amount for 1996 of \$1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

**701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area.** For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

**701—40.52(422) Mutual funds.** Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in 701—subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.
2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.
3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

**701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted.** The Iowa educational savings plan trust was created so that individuals can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover future higher education costs

of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted.

**40.53(1)** *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.* Effective with contributions made on or after July 1, 1998, 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. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states' educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

For example, an individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant files the 1998 Iowa individual income tax return, the participant can claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual's ten grandchildren.

**40.53(2)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary's account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

**40.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* If a participant cancels a beneficiary's account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary, or if a participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses, the refund of the funds is to be included in net income on the participant's Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the participant.

For 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.

**40.53(4)** *Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.* To the extent that the contribution was not deductible for federal income tax purposes, an individual can deduct on the Iowa individual income tax return a gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, House File 923.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.54(422) Roth individual retirement accounts.** Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

**40.54(1) Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs.** At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized \$20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion income was taxed in 1998, \$5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 701—40.47(422).

**40.54(2) Roth IRA conversion income for part-year residents.** To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had \$20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the \$20,000 in conversion income is allocated to Iowa. Thus, \$12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

**701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims.** For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from

the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

**701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions.** For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

**701—40.57(422) Installment sales by taxpayers using the accrual method of accounting.** For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for \$200,000 which resulted in a capital gain of \$50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported \$12,500 of the gain on his 2001 federal return and will report capital gains of \$12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of \$50,000 from the land sale. Although Taxpayer Jones must report a capital gain of \$12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of \$12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of \$50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for \$500,000 which resulted in a capital gain of \$100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported \$20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report \$20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

**701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States.** For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to state military service or federal service or 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 Iowa Code section 422.7 as amended by 2004 Iowa Acts, House File 2208.

**701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate.** All payments received on or after July 1, 2002, by a beneficiary of a deceased pensioner or annuitant are exempt from Iowa income tax to the extent the payments are from an annuity purchased under an employee's pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes. Thus, a lump sum payment received by a beneficiary from an annuity purchased under an employee's pension or retirement plan is exempt from Iowa income tax to the extent the commuted value of the annuity was included as part of the decedent employee's estate for Iowa inheritance tax purposes. Under prior law, only installment payments of an annuity received by a beneficiary were exempt from Iowa income tax if the commuted value of the installments had been included as part of the decedent employee's estate for Iowa inheritance tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, Senate File 2305.

**701—40.60(422) Additional first-year depreciation allowance.**

**40.60(1)** *Assets acquired after September 10, 2001, but before May 6, 2003.* For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

**40.60(2)** *Assets acquired after May 5, 2003, but before January 1, 2005.* For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must

complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

b. If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**40.60(3)** *Assets acquired after December 31, 2007, but before January 1, 2010.* For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

**40.60(4)** *Qualified disaster assistance property.* For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**40.60(5) *Assets acquired after December 31, 2009, but before January 1, 2013.*** For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, 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, 2013, 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, 2013, 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 2011 Iowa Acts, Senate File 512.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.** For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered by military orders for one of the operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve.** A taxpayer may subtract, in computing net income, the costs not reimbursed that were

incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

**701—40.63(422) Exclusion of income from military student loan repayments.** Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty.** An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.65(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa individual income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa individual income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa individual income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa individual income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa individual income tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa individual income tax.

**40.65(1)** If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, 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 increased Section 179 expensing, or taxpayer may reflect

the change for increased Section 179 expensing 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 the federal Section 179 expensing allowance and the Iowa Section 179 expensing allowance. Taxpayer now elects to take the increased Section 179 expensing allowance 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.

**40.65(2)** If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to \$25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related 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 the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant.** For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to \$10,000 in unreimbursed expenses that were incurred relating to the taxpayer's donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d) of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

**701—40.67(422) Deduction for alternative motor vehicles.** For tax years beginning on or after January 1, 2006, but beginning before January 1, 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. The advanced lean burn technology, qualified hybrid and qualified alternative fuel vehicles must be placed in service before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

#### **701—40.68(422) Injured veterans grant program.**

**40.68(1)** For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to \$10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

**40.68(2)** For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

**701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain.** For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

**40.69(1) Reporting requirements.** In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes.** For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with

property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

**701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects.**

**40.70(1)** *Projects registered on or after January 1, 2007, but before July 1, 2009.* For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.37(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.37(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

**40.70(2)** *Projects registered on or after July 1, 2009.* For tax years beginning on or after July 1, 2009, a taxpayer who is a resident of Iowa may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income

on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa individual income tax return for each of the tax years 2010-2013.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 5, and Iowa Code section 422.7.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—40.71(422) Exclusion for certain victim compensation payments.** Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.

2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.

3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

**701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.**

**40.72(1)** For tax years beginning on or after January 1, 2007, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

**40.72(2)** For tax years beginning on or after January 1, 2008, 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 from July 1, 1958, through May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement Iowa Code section 422.7 as amended by 2008 Iowa Acts, House File 2283.

**701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents.** Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

**40.73(1) Term of coverage.** Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

**40.73(2) Federal treatment.** Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income

tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.74(422) Exclusion for AmeriCorps Segal Education Award.** Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund.** For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

[ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard.** For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

**40.76(1)** Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

*a.* Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.

*b.* Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.

*c.* Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

**40.76(2)** Military personnel who do not qualify for the exclusion include the following:

*a.* Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.

*b.* Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.

*c.* Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.

*d.* Other members of the national guard who do not receive pay from the federal government.

**40.76(3)** Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

**40.76(4)** Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.77(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—40.78(422) Allowance of certain deductions for 2008 tax year.**

**40.78(1)** For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

**40.78(2)** Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations, the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.79(422) Special filing provisions related to 2010 tax changes.**

**40.79(1)** For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

**40.79(2)** Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the

2010 tax year to reflect these adjustments or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

*a.* The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

*b.* The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

**40.79(3) Examples.** The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1:** Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010. Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

**EXAMPLE 2:** Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of \$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

**EXAMPLE 3:** Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.  
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◇ Two or more ARCs



CHAPTER 42  
ADJUSTMENTS TO COMPUTED TAX AND TAX CREDITS  
[Prior to 12/17/86, Revenue Department[730]]

**701—42.1(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]

**701—42.2(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.

**42.2(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.

**42.2(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.

**42.2(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.

**42.2(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]

#### **701—42.3(422) Exemption credits.**

**42.3(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).

**42.3(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.

**42.3(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.

**42.3(4)** A head of household as defined in 701—subrule 39.4(7) is allowed a personal exemption credit of \$80.

**42.3(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.

**42.3(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.

**42.3(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]

**701—42.4(422) Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa.** Effective for tax years beginning on or after January 1, 1998, taxpayers who pay tuition and textbook expenses of dependents who attend grades kindergarten through 12 in an Iowa school may receive a tax credit of 25 percent of up to \$1,000 of qualifying expenses for each dependent attending an elementary or secondary school located in Iowa. In order for the taxpayer to qualify for the tax credit for tuition and textbooks, 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. The following definitions and criteria apply to the determination of the tax credit for amounts paid by the taxpayer for tuition and textbooks for a dependent attending an elementary or secondary school in Iowa:

**42.4(1) Tuition.** For purposes of the tuition and textbook tax credit, “tuition” means any charge made by an elementary or secondary school for the expense of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools 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 private instruction of a child who is physically unable to attend classes at the site of the elementary or secondary school.

“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 private instruction of a dependent who attends an elementary or secondary school in Iowa. Amounts paid to a school for meals, lodging, or clothing for a dependent do not qualify for the tax credit for tuition.

Amounts paid to an individual or organization for home schooling of a dependent or the teaching of a dependent outside of an elementary or secondary school may not be claimed for purposes of the tuition and textbook tax credit.

**42.4(2) Textbooks.** For purposes of the tuition and textbook tax credit, “textbooks” means books and other instructional materials used in elementary and secondary schools in Iowa to teach only those subjects legally and commonly taught in public elementary and secondary schools in Iowa. “Textbooks” includes fees or charges by the elementary or secondary school 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. “Textbooks” also 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.

**42.4(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 if provided at a school, 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 that may qualify for the tuition and textbook tax credit:

- (1) Fees for participation in school sports activities.
- (2) Fees for field trips.

(3) Rental fees for instruments for school bands or orchestras but not rental fees in rent-to-own contracts.

(4) Driver's education fees, if paid to a school.

(5) Cost of activity tickets or admission tickets to school sporting, music and dramatic events.

(6) Fees for events such as homecoming, winter formal, prom, or similar events.

(7) Rental of costumes for school plays.

(8) Purchase of costumes for school 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 school academic or athletic awards.

(11) Trumpet grease, woodwind reeds, guitar picks, violin strings and similar types of items for maintenance of instruments used in school bands or orchestras.

(12) Band booster club or athletic booster club dues, but only if dues are for the dependent attending the school and not the parent or adult.

(13) Rental of formal gown or tuxedo for school dance or other school event.

(14) Dues paid to school clubs or school-sponsored organizations such as chess club, photography club, debate club, or similar organizations.

(15) Amounts paid for music that will be used in school music programs, including vocal music programs.

(16) Fees paid for 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 if paid to the school.

*b.* The following are specific examples of expenditures related to a dependent's participation in or attendance at extracurricular activities that will not qualify for the tuition and textbook credit.

(1) Purchase of a musical instrument used in a school 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 school activity trips which involve payment for meals and lodging.

(5) Fees paid to K-12 schools 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 for high school students.

(8) Payment for private instrumental lessons, voice lessons or similar lessons.

(9) Amounts paid for a school yearbook, annual or class ring.

(10) 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.

**42.4(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.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—42.5(422) Nonresident and part-year resident credit.** For tax years beginning on or after January 1, 1982, 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, which is included in the Iowa individual income tax booklet. The following subrules clarify how the nonresident and part-year resident credit is computed for nonresidents of Iowa and taxpayers who are part-year residents of Iowa during the tax year.

**42.5(1) Nonresident/part-year resident credit for nonresidents of Iowa.** A nonresident of Iowa shall complete the Iowa individual return in the same way an Iowa resident completes the form by reporting the individual's total net income, including income earned outside Iowa, on the front of the IA 1040 return form. A nonresident individual is allowed the same deduction for federal income tax and the same itemized deductions as an Iowa resident taxpayer with identical deductions for these expenditures. Thus, a nonresident with a taxable income of \$40,000 would have the same initial Iowa income tax liability as a resident taxpayer with a taxable income of \$40,000 before the nonresident/part-year resident credit is computed.

The nonresident/part-year resident credit is computed on Schedule IA 126. The lines referred to in this subrule are from Schedule IA 126 and Form IA 1040 for the 2008 tax year. Similar lines on the schedule and form may apply for subsequent tax years. The individual's Iowa source net income from lines 1 through 25 of the schedule is totaled on line 26 of the schedule. If the nonresident's Iowa source net income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa income tax return for the tax year. However, if the Iowa source net income amount is \$1,000 or more, the Iowa source net income is then divided by the person's all source net income on line 27 of Schedule IA 126 to determine the percentage of the Iowa net income to all source net income. This Iowa income percentage is inserted on line 28 of the schedule, and this percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage or the percentage of the individual's total income which was earned outside Iowa. The nonresident/part-year resident credit percentage is entered on line 29 of Schedule IA 126. The Iowa income tax on total income from line 43 of the IA 1040 is entered on line 30 of Schedule IA 126. The total of nonrefundable credits from line 49 of the IA 1040 is then shown on line 31 of Schedule IA 126. The amount on line 31 is subtracted from the amount on line 30 which results in the Iowa total tax after nonrefundable credits which is entered on line 32. This Iowa tax-after-credits amount is multiplied by the nonresident/part-year resident credit percentage from line 29 to compute the nonresident/part-year resident credit. The amount of the credit is inserted on line 33 of Schedule IA 126 and on line 51 of the IA 1040.

EXAMPLE A. A single resident of Nebraska had Iowa source net income of \$15,000 in 2008 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 an all source net income of \$40,000 and a taxable income of \$30,000 due to a federal tax deduction of \$7,000 and itemized deductions of \$3,000. The Iowa income percentage is computed by dividing the Iowa source net income of \$15,000 by the taxpayer's all source net income of \$40,000, which results in a percentage of 37.5. This percentage is subtracted from 100 percent which leaves a nonresident/part-year resident credit percentage of 62.5.

The Iowa tax from line 43 of the IA 1040 is \$1,508. The total nonrefundable credit from line 49 is \$40, which leaves a tax amount of \$1,468 when the credit is subtracted from \$1,508. When \$1,468 is

multiplied by the nonresident/part-year resident credit percentage of 62.5, a nonresident credit of \$918 is computed which is entered on line 33 of Schedule IA 126 as well as on line 51 of the IA 1040 for 2008.

EXAMPLE B. A California resident, who was married, had \$20,000 of Iowa source income in 2008 from an Iowa farm. This individual had an additional \$80,000 in income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had paid \$18,000 in federal income tax in 2008 and had itemized deductions of \$12,000 in 2008.

The taxpayers' taxable income on their joint Iowa return was \$70,000. The taxpayers had an Iowa income tax liability of \$4,583 after application of the personal exemption credits of \$80. The taxpayers had an Iowa source income of \$20,000 and an all source net income of \$100,000. Therefore, the Iowa income percentage was 20. Subtracting the Iowa income percentage of 20 percent from 100 percent leaves a nonresident/part-year resident credit percentage of 80.

When the Iowa income tax liability of \$4,583 is multiplied by 80 percent, this results in a nonresident/part-year resident credit of \$3,666. This credit amount is entered on line 33 of the Schedule IA 126 and on line 51 of Form IA 1040.

**42.5(2)** *Nonresident/part-year resident credit for part-year residents of Iowa.* An individual who is a resident of Iowa for part of the tax year shall complete the front of the IA 1040 income tax return form as a resident taxpayer by showing the taxpayer's total income, including income earned outside Iowa, on the front of the IA 1040 return form. A part-year resident of Iowa is allowed the same federal tax deduction and itemized deductions as a resident taxpayer who has paid the same amount of federal income tax and has paid for the same deductions that can be claimed on Schedule A in the tax year. Therefore, a part-year resident would have the same initial Iowa income tax liability as an Iowa resident with the same taxable income before computation of the nonresident/part-year resident credit.

The nonresident/part-year resident credit for a part-year resident is computed on Schedule IA 126. The lines referred to in this subrule are from the IA 1040 income tax return form and the Schedule IA 126 for 2008. Similar lines may apply for tax years after 2008. The individual's Iowa source income is totaled on line 26 of Schedule IA 126 and includes all the individual's income received while the taxpayer was a resident of Iowa and all the Iowa source income received during the period of the tax year when the individual was a resident of a state other than Iowa. Iowa source income includes, but is not limited to, wages earned in Iowa while a resident of another state as well as income from Iowa farms and other Iowa businesses that was earned during the portion of the year that the taxpayer was a nonresident of Iowa. In the case of interest from a part-year resident's account at an Iowa financial institution, only interest earned during the period of the individual's Iowa residence is Iowa source income unless the account is for an Iowa business. If the part-year resident's account at a financial institution is for an Iowa business, all interest earned in the year by the part-year resident from the account is taxable to Iowa.

Income earned outside Iowa by the part-year resident during the portion of the year the individual was an Iowa resident is taxable to Iowa and is part of the individual's Iowa source income. To compute the nonresident/part-year resident credit for a part-year resident, the taxpayer's Iowa source income on Schedule IA 126 is totaled. If the Iowa source income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa return. If the Iowa source income is \$1,000 or more, it is divided by the taxpayer's all source net income on line 27 of Schedule IA 126. The percentage computed by this procedure is the Iowa income percentage and is entered on line 28 of the Schedule IA 126. The Iowa income percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage which is entered on line 29 of Schedule IA 126. The Iowa tax from line 43 of the IA 1040 is then shown on line 30 of Schedule IA 126. The total of the Iowa nonrefundable credits from line 49 of the IA 1040 is entered on line 31 of Schedule IA 126 and is subtracted from the Iowa tax amount on line 30. The tax-after-credits amount on line 32 is next multiplied by the nonresident/part-year resident credit percentage from line 28. The amount calculated from this procedure is the nonresident/part-year resident credit which is shown on line 33 of Schedule IA 126 and on line 51 of Form IA 1040.

EXAMPLE A. A single individual was a resident of Nebraska for the first half of 2008 and moved to Iowa on July 1, 2008, 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, 2008, through June 30, 2008. In

the last half of 2008, this person had wages of \$30,000, interest income of \$300, and \$4,000 from the Nebraska ranch. This part-year resident had federal income tax paid in 2008 of \$11,000 and had itemized deductions of \$3,000.

The part-year resident's all source 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 2008 was \$44,500, which included the federal income tax deduction of \$11,000 and itemized deductions of \$3,000. The individual's Iowa income percentage was 58.6 which was determined by dividing the Iowa source income of \$34,300 by the all source income of \$58,500. Subtracting the Iowa income percentage of 58.6 from 100 percent results in a nonresident/part-year resident credit percentage of 41.4. The Iowa tax on total income was \$2,529 which was reduced to \$2,489 after subtraction of the personal exemption credit of \$40.

When \$2,489 is multiplied by the nonresident/part-year resident percentage of 41.4, a nonresident/part-year resident credit of \$1,030 is computed for this part-year resident.

EXAMPLE B. A single individual moved from Minnesota to Iowa on July 1, 2008. This person had received \$5,000 in income from an Iowa farm in March of the tax year and another \$10,000 from this farm in September of 2008. 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 last half of 2008. This person had \$2,000 in interest from a Minnesota bank in the first half of the year and \$2,000 in interest from an Iowa bank in the last six months of 2008. This taxpayer had \$8,000 in federal income tax withheld from wages in 2008 and claimed the standard deduction on both the Iowa and federal income tax returns.

The part-year resident's all source income was \$44,000 and the Iowa source 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, the farm income received in the first half of 2008 was taxable to Iowa as well as the farm income received while the individual was an Iowa resident. The individual's Iowa taxable income was \$34,250 which was computed after subtracting the federal income tax deduction of \$8,000 and a standard deduction of \$1,750. The taxpayer's Iowa income tax liability was \$1,757 after subtraction of a personal exemption credit of \$40.

The taxpayer's Iowa income percentage was 72.7 which was computed by dividing the Iowa source income of \$32,000 by the all source income of \$44,000. The nonresident/part-year resident credit percentage was 27.3 which was arrived at by subtracting the Iowa income percentage of 72.7 from 100 percent. The taxpayer's nonresident/part-year resident credit is \$480. This was determined by multiplying the Iowa income tax liability after personal exemption credit amount of \$1,757 by the nonresident/part-year resident percentage of 27.3.

This rule is intended to implement Iowa Code section 422.5.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

#### **701—42.6(422) Out-of-state tax credits.**

**42.6(1) General rule.** Iowa residents are allowed an out-of-state tax credit for taxes paid to another state or foreign country on income which is also reported on the taxpayer's Iowa return. The out-of-state tax credit is allowable only if the taxpayer files an Iowa resident income tax return.

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 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 income 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 42.6(2).

However, if the partnership, S corporation, limited liability company or trust is directly subject to tax in another state and the 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 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 purposes and a corporation income tax is imposed directly on the S corporation, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax paid to the other state.

**42.6(2) Limitation of out-of-state tax credit.** If an Iowa resident taxpayer pays income tax to another state or foreign country on any of the taxpayer's income, the taxpayer is entitled to a net tax credit; that is, the taxpayer may deduct from the taxpayer's Iowa net tax (not from gross income) the amount of income tax actually paid to the other state or country, provided the amount deducted as a credit does not exceed the amount of Iowa net income tax on the same income which was taxed by the other state or foreign country.

**42.6(3) Computation of tax credit.**

*a.* The limitation on the tax credit must be computed according to the following formula: Gross income taxed by another state or foreign country that is also taxed by Iowa 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 against the Iowa net tax. This quotient shall be computed as a percentage with a minimum of one decimal place. However, if the income tax paid to the other state or foreign country on the gross income taxed by the other state or foreign country is less than the maximum tax credit against the Iowa tax, the out-of-state credit allowed against the Iowa tax may not exceed the income tax paid to the other state or foreign country. The income tax paid to the other state or foreign country is the net state or foreign income tax actually paid for the tax year on the income taxed by the other state or foreign country and not the state or foreign income tax paid during the tax year, such as state income tax or foreign income tax withheld from the income taxed by the other state or foreign country.

*b.* Out-of-state tax credit examples. An individual who is an Iowa resident for the entire tax year can claim an out-of-state tax credit against the person's Iowa income tax liability for any income tax paid to another state or foreign country for the tax year on any gross income received by the individual for the year which was derived from sources outside of Iowa to the extent this gross income is also subject to Iowa income tax.

However, in the case of an individual who is a part-year resident of Iowa for the tax year, that individual can only claim an out-of-state tax credit against the person's Iowa income tax liability for income tax paid to another state or foreign country on gross income derived from sources outside of Iowa during the period of the tax year that the individual was an Iowa resident and only to the extent this gross income derived from sources outside of Iowa was also subject to Iowa income tax.

The taxpayer's out-of-state credit is computed on Schedule IA 130 which is to be filed with the taxpayer's Iowa individual income tax return. The taxpayer's income tax return or other document of the other state or foreign country supporting the income tax paid to the other state or foreign country shall be filed with the individual's Iowa income tax return to support the out-of-state tax credit claimed.

**EXAMPLE 1.** Gene Miller was an Iowa resident for the entire year 2008. Mr. Miller lived in Council Bluffs and worked the entire year for a company in Omaha, Nebraska. Mr. Miller had wages of \$30,000 and Nebraska income tax withheld of \$1,000. He also had income of \$10,000 from rental of an Iowa farm and another \$10,000 in interest income from a personal savings account in an Iowa bank. The amount of Mr. Miller's gross income that was taxed by Nebraska (the other state or foreign country) was \$30,000. His total gross income in 2008 was \$50,000. Thus, 60 percent of his income was earned in Nebraska. Mr. Miller's Iowa tax on line 54 of Form IA 1040 was \$917, which resulted in a potential out-of-state credit of 60 percent of the Iowa tax or \$550 because 60 percent of Mr. Miller's income was earned outside Iowa and was taxed by Nebraska. However, Mr. Miller's income tax liability on the Nebraska income tax return was only \$500. Thus, the out-of-state tax credit allowed was \$500, because that was less than the potential out-of-state tax credit of \$550.

**EXAMPLE 2.** Ben Smith was a part-year Iowa resident in 2008. He resided in Missouri for the first six months of the year until he moved to Keokuk, Iowa, on July 1. Mr. Smith was employed in Missouri for the entire year and had wages of \$30,000 and had Missouri income tax liability of \$1,000. Half of Mr. Smith's wages or \$15,000 of the wages was earned during the time Mr. Smith was an Iowa resident. Mr. Smith also had \$10,000 in farm rental income from farmland located in Iowa. The amount of gross

income taxed by Missouri while Mr. Smith was an Iowa resident was \$15,000. Mr. Smith's gross income earned while an Iowa resident for the year was \$25,000. Thus, 60 percent of the gross income was earned in the other state while Mr. Smith was an Iowa resident. Mr. Smith's Iowa income tax on line 54 of the IA 1040 was \$1,292. This resulted in a potential out-of-state credit of \$775 because 60 percent of the gross income was earned in Missouri during the period Mr. Smith was an Iowa resident. However, since 50 percent of the income earned in Missouri was earned while Mr. Smith was a resident of Iowa and the Missouri income tax liability for the year was \$1,000, the out-of-state credit was \$500 or 50 percent of the Missouri income tax liability. The out-of-state credit allowed was \$500, because this was less than the Iowa income tax of \$775 that was applicable to the gross income earned in Missouri during the period Mr. Smith was an Iowa resident.

**42.6(4) Proof of claim for tax credit.** The credit may be deducted from Iowa net income tax if written proof of such payment to another state or foreign country is furnished to the department. The department will accept any one of the following as proof of such payment:

*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, 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 (whether wages, salaries, property or business) of total income on which such tax was paid.

*b.* A copy of the income tax return filed with the other state or foreign country 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.

This rule is intended to implement Iowa Code section 422.8.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

#### **701—42.7(422) Out-of-state tax credit for minimum tax.**

**42.7(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.

**42.7(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).

**42.7(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]

**701—42.8(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]

**701—42.9(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]

**701—42.10(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.

**42.10(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 less credits 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 less credits 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 less credits 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.

**42.10(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 credits including 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]

**701—42.11(15,422) Research activities credit.** Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a credit equal to 6½ percent of the state's apportioned share of qualified expenditures for increasing research activities. Effective for tax years beginning on or after January 1, 1991, the Iowa research activities credit will be computed on the basis of the qualifying expenditures for increasing research activities as allowable under Section 41 of the Internal Revenue Code in effect on January 1, 1999. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in Iowa to the total qualified research expenditures. The Iowa research activities credit is made permanent for tax years beginning

on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes.

**42.11(1)** Qualified expenditures in Iowa are:

- a. Wages for qualified research services performed in Iowa.
- b. Cost of supplies used in conducting qualified research in Iowa.
- c. Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.
- d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

**42.11(2)** Total qualified expenditures are:

- a. Wages paid for qualified research services performed everywhere.
- b. Cost of supplies used in conducting qualified research everywhere.
- c. Rental or lease cost of personal property used in conducting qualified research everywhere.
- d. Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

“Qualifying expenditures for increasing research activities” is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

A taxpayer may claim on the taxpayer’s individual income tax return the pro-rata share of the credit for qualifying research expenditures incurred in Iowa by a partnership, subchapter S corporation, or estate or trust. The portion of the credit claimed by the individual must 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.

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 taxpayer or may be credited to the estimated tax of the taxpayer for the following year.

**42.11(3)** Research activities credit for tax years beginning in 2000. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities. The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

b. In lieu of the credit computed under paragraph 42.11(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

c. In lieu of the credit computed under paragraph 42.11(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years

beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 42.11(3) "b" and the alternative simplified credit described in paragraph 42.11(3) "c," such amounts are limited to research activities conducted within this state. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

*e.* 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. 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.

*f.* An eligible business approved under the new jobs and income program prior to July 1, 2005, is eligible for an additional research activities credit as described in 701—subrule 52.7(4). An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in 701—subrules 52.7(5) and 52.7(6).

*g.* Tax years ending on or after July 1, 2005, but before July 1, 2009. For eligible businesses approved under the enterprise zone program and the high quality job creation 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. These expenses are not eligible for the federal credit for increasing research activities. These 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 shall not exceed \$1 million in the aggregate.

These expenses are available only for the additional research activities credit set forth in subrule 42.11(3), paragraph "f," for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.29(1) for businesses approved under the high quality job creation program. These expenses are not available for the research activities credit set forth in subrule 42.11(3), paragraphs "a," "b" and "c."

*h.* 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 42.42(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

42.11(3), paragraph “f,” for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.42(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs “a,” “b” and “c.”

**42.11(4)** Reporting of research activities credit claims. Beginning with research activities credit claims filed on or after July 1, 2009, the department shall issue an annual report to the general assembly of all research activities credit claims in excess of \$500,000. The report, which is due by February 15 of each year, will contain the name of each claimant and the amount of the research activities credit for all claims filed during the previous calendar year in excess of \$500,000.

This rule is intended to implement Iowa Code sections 15.335 and 422.10 as amended by 2011 Iowa Acts, Senate File 512.

[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]

**701—42.12(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.

**42.12(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 subsection 96.19(37) 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)

**42.12(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.

**42.12(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]

#### **701—42.13(422) Earned income credit.**

**42.13(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.

**42.13(2)** *Tax years beginning on or after January 1, 2007.* Effective for tax years beginning on or after January 1, 2007, 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. 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.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

### **701—42.14(15) Investment tax credit—new jobs and income program and enterprise zone program.**

**42.14(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 Iowa department of economic development 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. For business applications received by the Iowa department of economic development 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.

**42.14(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 Iowa department of economic development 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 attached to 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 Iowa department of economic development 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 attached to the tax return for the tax year during which the tax credit is claimed.

**42.14(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.

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.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—42.15(422) Child and dependent care credit.** Effective for tax years beginning on or after January 1, 1990, 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.

**42.15(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. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (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 federal adjusted gross incomes (or net incomes) of the taxpayers for tax years beginning on or after January 1, 1993.

*Federal Adjusted Gross Income (Net Income for Tax Years Beginning on or after January 1, 1993)	Percentage of Federal Child and Dependent Care Credit Allowed for 1993 through 2005 Iowa Returns	Percentage of Federal Credit Allowed for 2006 and Later Tax Years
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	No Credit	30%
\$45,000 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 separately on the combined return form, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

**42.15(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 separately on the combined return form. For tax years beginning on or after January 1, 1991, the taxpayers' net incomes are used to compute the Iowa child and dependent care credit and allocate the credit between spouses in situations where the taxpayers file separate Iowa returns or separately on the combined return form.

EXAMPLE A. A married couple has filed a joint federal return on which they showed a federal adjusted gross income of \$40,000 or a combined net income of \$40,000 on their state return for the tax year beginning January 1, 2007. 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 federal adjusted gross income of \$30,000 or a net income of \$30,000 and the second spouse had a federal adjusted gross income of \$10,000 or 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 to the combined net income of both spouses as shown below:

$$\begin{aligned} \$180 \times \frac{\$30,000}{\$40,000} &= \$135 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$30,000 net income for 2007} \\ \\ \$180 \times \frac{\$10,000}{\$40,000} &= \$45 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$10,000 net income for 2007} \end{aligned}$$

EXAMPLE B. A married couple filed a joint federal return for 2007 and filed their 2007 Iowa return using the married filing separately on the combined return form filing status. 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.

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 net income as it relates to the combined net income of both spouses as shown below:

$$\begin{aligned} \$320 \times \frac{\$25,000}{\$37,500} &= \$213 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$25,000 net income for 2007} \\ \\ \$320 \times \frac{\$12,500}{\$37,500} &= \$107 \quad \text{child and dependent care credit for spouse} \\ &\quad \text{with \$12,500 net income for 2007} \end{aligned}$$

**42.15(3) Computation of the Iowa child and dependent care credit for nonresidents and part-year residents.** Nonresidents and part-year residents who have incomes from Iowa sources in the tax year may claim child and dependent care credits on their Iowa returns. 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)	×	<u>*Iowa net income</u> Federal adjusted gross income or 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 of the Iowa source incomes less the Iowa source adjustments to income on line 26 of the Form IA 126.

In cases where married taxpayers are nonresidents or part-year residents of Iowa and are filing separate Iowa returns or separately on the combined 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.

**42.15(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 wages and other income from Iowa sources or an Iowa net income of \$15,000. That spouse had an all source net income of \$18,000. The second spouse had an Iowa net income of \$10,000 and an all source net income of \$12,000. 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 for the 2007 tax year:

Federal child and dependent care credit	Percentage of federal child and dependent credit allowed on Iowa return	Iowa net income <hr style="width: 100px; margin: 0 auto;"/> All source net income
\$800	× 50%	= \$400 × $\frac{\$25,000}{\$30,000}$ = \$333

The \$333 credit is allocated between the spouses as shown below for the 2007 tax year:

\$333	× $\frac{\$10,000}{\$25,000}$	= \$133 for spouse with Iowa source net income of \$10,000
\$333	× $\frac{\$15,000}{\$25,000}$	= \$200 for spouse with Iowa source net income of \$15,000

This rule is intended to implement Iowa Code section 422.12C.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.16(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]

**701—42.17(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 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 Iowa Code section 15E.193B.

**42.17(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 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 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.

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 Iowa department of economic development 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 attached to 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 Iowa department of economic development may be found under 261—Chapter 59.

**42.17(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.

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 Iowa department of economic development, 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 Iowa department of economic development 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 Iowa Code section 15E.193B.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.18(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.

**42.18(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 attached to 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 attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

**42.18(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.

**42.18(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.

**42.18(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]

**701—42.19(404A,422) Historic preservation and cultural and entertainment district tax credit.** 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 administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

**42.19(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.

**42.19(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. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, \$50 million in historic preservation and cultural and entertainment district tax credits is available. The allocation of the \$50 million of credits for the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, is set forth in rule 223—48.7(303,404A). For fiscal years beginning on or after July 1, 2012, \$45 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

b. For the state fiscal year beginning on July 1, 2009, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2009, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2010. For the state fiscal year beginning July 1, 2010, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2010, and \$30 million of tax credits may be claimed on tax returns beginning on or after January 1, 2011. For the state fiscal year beginning July 1, 2011, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2011, and \$30 million of tax credits may be claimed on tax returns beginning on or after January 1, 2012.

c. 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.

d. The state historic preservation office (SHPO) shall establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process shall not exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO shall be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property.

e. Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

**42.19(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 SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, qualified rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, 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. 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.

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.

For 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. However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been \$600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property. 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. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would be reduced accordingly by the same amount as the reduction required for federal tax purposes.

**42.19(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 attached to 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 the 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 and the amount of the tax credit being transferred, 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 attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit shall be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567

13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. The annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of \$297,000.

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.

**42.19(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity.* When the taxpayer that has earned a historic preservation and cultural and entertainment district tax credit is a partnership, limited liability company, S corporation, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit shall be allocated to the individual owners. The business entity shall allocate the historic preservation and cultural and entertainment district tax credit to each individual owner on the same pro-rata basis as the earnings of the business are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a partner of a partnership received 25 percent of the earnings or income of the partnership for the tax year in which the partnership had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to this partner.

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 rehabilitation project, 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 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.

**42.19(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.

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 state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and 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 state historic preservation office shall 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 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.

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.

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 refund shall be discounted as described in subrule 42.19(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2011 Iowa Acts, Senate Files 517 and 521, 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]

**701—42.20(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.

**42.20(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.

**42.20(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.

**42.20(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]

**701—42.21(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]

#### **701—42.22(15E,422) Venture capital credits.**

**42.22(1)** *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.* 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 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.

The department of revenue will be notified by the Iowa capital investment board or 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 a qualifying business or community-based seed capital 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 an individual taxpayer 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 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 \$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.

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.

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.

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.

**42.22(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.

**42.22(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.

**42.22(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. 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 an individual taxpayer 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. 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 an individual taxpayer 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, 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 section 15E.43 as amended by 2011 Iowa Acts, Senate File 517; sections 15E.51, 15E.66, 422.11F, and 422.11G; and 2011 Iowa Acts, Senate File 517, section 40.

[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]

**701—42.23(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.

**42.23(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).

**42.23(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 Iowa department of economic development 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 attached to 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 Iowa department of economic development 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.

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]

**701—42.24(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 and subsequent calendar years 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 example, the total amount of endow Iowa tax credits authorized for the 2011 calendar year is \$4,551,813, so the maximum amount of tax credit authorized to a single taxpayer is \$227,590.65 (\$4,551,813 times 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 2011 Iowa Acts, Senate File 302, 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]

**701—42.25(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]

**701—42.26(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.

**42.26(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.

**42.26(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.

**42.26(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.

**42.26(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.

**42.26(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]

**701—42.27(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).

**42.27(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).

**42.27(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 attach the tax credit certificate to 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.

**42.27(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]

**701—42.28(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. 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).

**42.28(1) *Application and review process for the renewable energy tax credit.*** A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy 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, 2015.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts. 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. 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.

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).

**42.28(2) Computation of the credit.** The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents 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.

**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.

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.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. 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(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 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). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

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 renewable energy facility was placed in service on April 1,

2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased or 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, 2024.

To claim the tax credit, the taxpayer must attach the tax credit certificate to 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.

**42.28(3) *Transfer of the renewable energy tax credit certificate.*** 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.

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 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.

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.

**42.28(4) *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).

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476C 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]

**701—42.29(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.

**42.29(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).

**42.29(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 Iowa department of economic development 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 attached to 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 Iowa department of economic development 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.

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.

**42.29(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]

**701—42.30(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]

**701—42.31(422) Early childhood development tax credit.** Effective for tax years beginning on or after January 1, 2006, 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 \$45,000. 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 the tax year beginning in the 2006 calendar year only, amounts paid for early childhood development expenses in November and December of 2005 shall be considered paid in 2006 for purposes of computing the credit.

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined income of the taxpayers must be less than \$45,000 to be eligible for the credit. If the combined income is less than \$45,000, 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 income.

**42.31(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.

**42.31(2) Expenses not eligible for the credit.** The following expenses do not qualify for the early childhood development tax credit:

a. Any 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]

**701—42.32(422) School tuition organization tax credit.** Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the 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. 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 for tax years beginning on or after January 1, 2007.

**42.32(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 three 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.

**42.32(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.

**42.32(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.

For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.

**42.32(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 tax year. For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only. The total amount of tax credit certificates that may be authorized is \$2.5 million for the 2006 calendar year, \$5 million for the 2007 calendar year, \$7.5 million for the 2008 through 2011 calendar years, and \$8.75 million for 2012 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 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2007, was 37,500, the per-student tax credit would be \$200 (\$7.5 million divided by 37,500). 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 \$280,000 (\$200 times 1,400) of tax credit certificates for the 2008 calendar year. The department would notify this school tuition organization by December 1, 2007, of the authorization to issue \$280,000 of tax credit certificates for the 2008 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$430,769 (\$280,000 divided by 65%) during the 2008 calendar year which would be eligible for the tax credit.

**42.32(5) *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, which will be designed by the department, will 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.

**42.32(6) Claiming the tax credit.** The taxpayer must attach the tax credit certificate to the tax return for which the credit is claimed. 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 may 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 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.

**42.32(7) Reporting requirements.** Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each tax 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 tax year.

*c.* The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous tax year.

*d.* A list of each taxpayer who received a tax credit certificate for the previous tax year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous tax 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 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12]

**701—42.33(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. 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 2017	16 cents

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, for the same tax year for the same ethanol gallons.

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.

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.

**42.33(1) 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, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2017. 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(1) for examples illustrating how this subrule is applied.

**42.33(2) Allocation of credit to owners of a business entity.** 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 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]

**701—42.34(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 which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, but before 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. 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.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. For gallons sold during the 2012 calendar year, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and 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. For gallons sold during the 2013 to 2017 calendar years, 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. 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.

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.

**EXAMPLE:** 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:** 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, and the other site sold 10,000 gallons of biodiesel blended fuel. 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. If the facts in this example had occurred during the 2009 tax year, the taxpayer could 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.

**42.34(1) 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, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2017.

See 701—subrule 52.31(1) for examples illustrating how this subrule is applied.

**42.34(2) Allocation of credit to owners of a business entity.** 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 2011 Iowa Acts, Senate Files 531 and 533.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9821B**, IAB 11/2/11, effective 12/7/11]

**701—42.35(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.

**42.35(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.

**42.35(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.

**42.35(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]

**701—42.36(175,422) Agricultural assets transfer tax credit.** Effective for tax years beginning on or after January 1, 2007, 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. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

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 agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development 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 attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2009, the amount of tax credit certificates issued by the

Iowa agricultural development authority cannot exceed \$6 million, and the credit certificates will be issued on a first-come, first-served basis.

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 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 agricultural development 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 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.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 483, and Iowa Code section 422.11M.  
[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.37(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.

**42.37(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.

**42.37(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 attach the tax credit certificate to 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.

**42.37(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.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, and Iowa Code section 422.11T.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.38(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.

**42.38(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 attach the tax credit certificate to 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.

**42.38(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.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 4, and Iowa Code section 422.11U.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.39(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.

**42.39(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.

**42.39(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.

**42.39(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.

**42.39(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.

**42.39(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]

**701—42.40(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.

**42.40(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.

**42.40(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.

**42.40(3) Claiming the tax credit.** The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to 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 attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to 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.

**42.40(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]

**701—42.41(15,422) Redevelopment tax credit.** 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 may claim a redevelopment tax credit. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for a redevelopment project for the brownfield redevelopment authority which qualifies for the tax credit, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**42.41(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 the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed was \$1 million, and the amount of credits authorized for any one redevelopment project could not exceed \$100,000. For the fiscal year beginning July 1, 2011, and subsequent fiscal years, 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.

**42.41(2) Computation and claiming of the credit.**

- a. 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).
- b. Upon completion of the project, the Iowa department of economic development 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(3).
- c. 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.
- d. 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 whereby 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).
- e. To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the 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. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

**42.41(3) Transfer of the credit.** The redevelopment tax credit can be transferred 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 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. 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.

This rule is intended to implement Iowa Code section 15.293A as amended by 2011 Iowa Acts, Senate File 514, and section 422.11V.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12]

**701—42.42(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.

**42.42(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.”

**42.42(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.

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]

**701—42.43(16,422) Disaster recovery housing project tax credit.** For tax years beginning on or after January 1, 2011, 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.

**42.43(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.

**42.43(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.

**42.43(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.

**42.43(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 Supplement sections 16.211, 16.212 and 422.11X.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—42.44(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be deducted in the following sequence:

1. Personal exemption credit.
2. Tuition and textbook credit.
3. Nonresident and part-year resident credit.

4. Franchise tax credit.
5. S corporation apportionment credit.
6. Disaster recovery housing project tax credit.
7. School tuition organization tax credit.
8. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
9. Endow Iowa tax credit.
10. Agricultural assets transfer tax credit.
11. Film qualified expenditure tax credit.
12. Film investment tax credit.
13. Redevelopment tax credit.
14. Investment tax credit.
15. Wind energy production tax credit.
16. Renewable energy tax credit.
17. Redeemed Iowa fund of funds tax credit.
18. New jobs tax credit.
19. Economic development region revolving fund tax credit.
20. Charitable conservation contribution tax credit.
21. Alternative minimum tax credit.
22. Historic preservation and cultural and entertainment district tax credit.
23. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
24. Research activities tax credit.
25. Out-of-state tax credit.
26. Child and dependent care credit or early childhood development tax credit.
27. Motor fuel credit.
28. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
29. Wage-benefits tax credit.
30. Soy-based cutting tool oil tax credit.
31. Refundable portion of investment tax credit, as provided in subrule 42.14(2).
32. E-85 gasoline promotion tax credit.
33. Biodiesel blended fuel tax credit.
34. Soy-based transformer fluid tax credit.
35. E-15 plus gasoline promotion tax credit.
36. Earned income tax credit.
37. Estimated payments, payment with vouchers and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11F, 422.11H, 422.11J, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11S, 422.11T, 422.11U, 422.11W, 422.11X, 422.12, 422.12B and 422.12C and 2011 Iowa Acts, Senate File 531, section 35.

[ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9876B, IAB 11/30/11, effective 1/4/12]

**701—42.45(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. These programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the film, television and video project promotion program and the high quality jobs program. Effective for fiscal years beginning on or after July 1, 2010, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. The administrative rules for the aggregate tax credit limit for the Iowa department of economic development may be found at 261—Chapter 76.

This rule is intended to implement 2009 Iowa Code Supplement section 15.119 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]

**701—42.46(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 IA138. 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, 2014	3 cents
Gallons sold from January 1, 2015, through December 31, 2017	2 cents

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 for the same tax year for the same ethanol gallons.

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.

**42.46(1) 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, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2017. 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 before 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 times 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, 2018. The taxpayer sold 20,000 gallons of E-15 plus gasoline for the period from March 1, 2017, through February 28, 2018, of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$320 (16,000 gallons times 2 cents) on the taxpayer’s Iowa income tax return for the period ending February 28, 2018.

**42.46(2) Allocation of credit to owners of a business entity.** 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 2011 Iowa Acts, Senate File 531, section 35, as amended by 2011 Iowa Acts, Senate File 533, sections 63 to 65.  
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<sup>◇</sup> Two or more ARCs

CHAPTER 43  
ASSESSMENTS AND REFUNDS  
[Prior to 12/17/86, Revenue Department[730]]

**701—43.1(422) Notice of discrepancies.**

**43.1(1) *Notice of adjustments.*** A department employee designated by the director to examine returns and make audits who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due is authorized to notify the taxpayer of this discovery by ordinary mail. The notice shall not be termed an assessment, and it may inform the taxpayer what amount would be due if the information discovered is correct.

**43.1(2) *Right of taxpayer upon receipt of notice of adjustment.*** A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which the taxpayer considers relevant to the situation. Documents and records supporting the taxpayer's position may be required.

**43.1(3)** Rescinded, effective 7/24/85.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.

**701—43.2(422) Notice of assessment, supplemental assessments and refund adjustments.** If after following the procedure outlined in 43.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment without compliance with 43.1(2) or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

This rule is intended to implement Iowa Code sections 422.25 and 422.30.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—43.3(422) Overpayments of tax.** The following are provisions for refunding or crediting to the taxpayer's deposits or payments for tax in excess of amounts legally due.

**43.3(1) *Claims for refund.*** A claim for refund is a formal request made by the taxpayer or the taxpayer's personal representative to the department of revenue for repayment of state income tax that was paid with the taxpayer's previously filed individual income tax return. In order for a claim for refund to be considered to be a valid document, the taxpayer or the taxpayer's personal representative must file the claim on an IA 1040X Amended Return Form or on an IA 1040 Income Tax Return Form for the appropriate tax year, with the notation "Amended for Refund" clearly shown on the face of the return form. The taxpayer or the taxpayer's personal representative must file the claim for refund with the department under separate cover so the claim is not filed with another tax return or with other documents or forms submitted to the department.

In addition, the claim for refund must be filed within one of the time periods specified in Iowa Code section 422.73(2) in order for the refund claim to be timely so that the claim may be considered on its merits by the department.

If the department determines that the taxpayer's claim is without merit and the claim for refund should be rejected, the department will notify the taxpayer or the taxpayer's personal representative by mail that the claim for refund has been rejected and of the reason for rejection. In addition, the rejection letter will advise the taxpayer that the taxpayer has 60 days from the date of the letter to file a protest of the department's rejection of the claim for refund. The taxpayer's appeal of the rejection of the claim for refund must be filed in accordance with rule 701—7.8(17A).

**43.3(2) *Offsetting refunds.*** A taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department, may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

**43.3(3) *Setoffs of qualifying debts administered by the department of administrative services.*** Before any refund or rebate from a taxpayer's individual income tax return is considered for purposes of setoff, the refund or rebate must be applied first to any outstanding tax liability of that taxpayer with the department of revenue. After all outstanding tax liabilities are satisfied, any remaining balance of refund or rebate will be set off against any debt of the taxpayer, setoff of which is overseen by the department of administrative services pursuant to 2003 Iowa Acts, House File 534, section 86.

**43.3(4) *College loan setoff.*** Rescinded IAB 11/12/03, effective 12/17/03.

**43.3(5) *District court debts setoff.*** Rescinded IAB 11/12/03, effective 12/17/03.

**43.3(6) *Overpayment credited to estimated tax.*** Any remaining balance of overpayment, at the election of the taxpayer, will be refunded to the taxpayer or credited as a first payment of the taxpayer's estimated tax for the following year. However, a taxpayer may elect to credit an overpayment from a return to the estimated tax for the following tax year only in cases when the return is filed in the same calendar year that the return is due. For example, a taxpayer's 1994 return is due on April 30, 1995. If the taxpayer files that return on or before December 31, 1995, the taxpayer can elect to credit an overpayment on that return to estimated tax for 1995, and this election will be honored by the department. See also rule 701—49.7(422).

If an overpayment of income tax is shown as a credit to estimated tax for the succeeding taxable year, the amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund of the overpayment shall be allowed on the return where the overpayment arose.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may properly be assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year, the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

**43.3(7) *Refunds—statute of limitations for years ending before January 1, 1979.*** Rescinded IAB 10/12/94, effective 11/16/94.

**43.3(8) *Refunds—statute of limitations for tax years ending on or after January 1, 1979.*** The statute of limitations with respect to which refunds or credit may be claimed are:

*a.* The later of

- (1) Three years after due date of payment upon which refund or credit is claimed; or
- (2) One year after which such payment was actually made.

*b.* Six months from the date of final disposition of any federal income tax matter with respect to the particular tax year. The taxpayer, however, must have notified the department of the matter within six months after the specified three-year period, contained in paragraph "a," subparagraph (1), above. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits.

The refund 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).

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in 43.3(8)“a”(1) above of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term “matter” includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit 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).

d. Three years after the date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

**43.3(9) Refunds—statute of limitations for individuals who died as a result of hostile action.** Rescinded IAB 10/12/94, effective 11/16/94.

**43.3(10) Refunds—statute of limitations for MIAs and spouses of MIAs.** Rescinded IAB 10/12/94, effective 11/16/94.

**43.3(11) Refunds—statute of limitations for insolvent farmers who received capital gains from farmland sold in 1982 and 1983.** Rescinded IAB 10/12/94, effective 11/16/94.

**43.3(12) Refunds—statute of limitations for individuals with certain charitable contributions.** Rescinded IAB 10/12/94, effective 11/16/94.

**43.3(13) Refunds—statute of limitations for taxpayers who paid state income tax on 1988 returns on certain supplemental assistance payments.** Rescinded IAB 11/24/04, effective 12/29/04.

**43.3(14) Refunds—statute of limitations for taxpayers who paid state income tax on returns for tax years where federal income tax was refunded due to a provision of the Taxpayer Relief Act of 1997.** Notwithstanding the three-year statute of limitations in Iowa Code section 422.73, claims for refund filed with the department on or before June 30, 1999, will be considered timely if the taxpayer’s federal income tax was refunded due to a provision in the Taxpayer Relief Act of 1997 which affected the federal adjusted gross income of an individual or an estate or a trust. This particular provision may affect Iowa returns for a tax year beginning on or after January 1, 1977, to the extent the federal adjusted gross incomes on federal returns for the tax year were affected by the Taxpayer Relief Act of 1997.

**43.3(15) Refunds—statute of limitations for taxpayers who paid 90 percent of the tax by the due date and filed the original return in the six-month extended period.** If a taxpayer has paid 90 percent of the income tax required to be shown due by the original due date of the return and has filed the original income tax return sometime in the six-month extended period after the original due date, the taxpayer may file an amended return by October 31 of the third year following the year the original return was due and shall be within the statute of limitations for refund. This position is supported by the Iowa Supreme Court in *Conoco, Inc. v. Iowa Department of Revenue and Finance*, 477 N.W.2d 377 (Iowa 1991). See also 701—subrule 39.2(4) which pertains to the extended period for filing the Iowa income tax return when 90 percent of the tax is paid by the original due date of the Iowa income tax return.

EXAMPLE 1. Joe Barnes had paid at least 90 percent of the tax shown due on his 1999 Iowa income tax return by the April 30 original due date and filed his original 1999 Iowa return on May 15, 2000. Mr. Barnes determined that he had failed to claim several deductions on the original 1999 Iowa return, so he filed an amended 1999 return on October 31, 2003. The amended return was filed within the three-year statute of limitations for refund since it was filed within three years of the extended due date of the return, October 31, 2000. The six-month extended due date applied in this case because the original return was filed within the six-month extended period.

EXAMPLE 2. Fred Jones paid 90 percent of the tax shown due on his 1999 return by the April 30 original due date and filed the original return on or before the April 30, 2000, original due date for this return. Mr. Jones determined that when he filed the original 1999 Iowa return, he failed to claim the Iowa income tax withheld from a part-time job he held in 1999. Mr. Jones filed an amended 1999 Iowa

return on May 15, 2003, to claim the Iowa tax withheld that he had failed to claim on the original return. This amended return was rejected by the department because it was not filed within three years of the due date of the return. Although Mr. Jones had paid 90 percent of the tax by the due date, the due date was not extended because the original return had been filed by the due date of April 30, 2000.

This rule is intended to implement Iowa Code section 421.17 as amended by 2003 Iowa Acts, House File 534, and sections 422.2, 422.16, and 422.73.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—43.4(68A,422,456A) Optional designations of funds by taxpayer.**

**43.4(1) Iowa fish and game protection fund.** The taxpayer may designate an amount to be donated to the Iowa fish and game protection fund. The donation must be \$1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, and the Iowa election campaign checkoff have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed on the original return or the payment remitted with the return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, only \$20 is an overpayment. The taxpayer would not receive any refund and all \$20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes \$20. No money would be credited to the fund in this instance.

EXAMPLE C: Amount shown due on return is \$30. \$20 is designated to the fund. A \$50 payment was made with the return. Due to an error on the return, the taxpayer owes \$40. Only \$10 would be credited to the fund in this situation.

**43.4(2) Iowa election campaign fund.** A person with a tax liability of \$1.50 or more on the Iowa individual income tax return may direct or designate that a \$1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of \$3.00 or more, each spouse may direct or designate that a \$1.50 contribution be made to a specific political party or that a \$1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts and other state agencies are satisfied. Note that for purposes of this subrule, “political party” means a party as defined in Iowa Code section 43.2.

In a tax year when there are two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on individual income tax returns for that tax year are to be divided equally between the two parties. In a tax year where there are more than two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on income tax returns for that tax year are to be divided among the political parties on the basis of the number of registered voters for a particular political party on December 31 of that tax year to the total number of registered voters on December 31 of that tax year that have declared an affiliation with any of the recognized political parties.

Thus, if there were 400,000 registered voters for “x” political party, 500,000 registered voters for “y” political party, and 100,000 registered voters for “z” political party on December 31 of a tax year

where there were three recognized political parties, 40 percent of the undesignated political contributions on 1997 returns would be paid to “x” political party since 40 percent of the registered voters with an affiliation to a political party on December 31 had an affiliation with party “x” on that day.

**43.4(3) Domestic abuse services checkoff.** Rescinded IAB 11/30/11, effective 1/4/12.

**43.4(4) State fair foundation fund checkoff.** For tax years beginning on or after January 1, 1993, a taxpayer filing a state individual income tax return can designate a checkoff of \$1 or more to the foundation fund of the Iowa state fair foundation. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the foundation fund checkoff, the amount credited to the foundation fund checkoff will be reduced accordingly. The designation to the foundation fund checkoff is irrevocable.

A designation to the foundation fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, and the Iowa fish and game protection fund checkoff are satisfied.

On or before January 31 of the year following the year in which returns with the foundation fund checkoff are due, the department of revenue shall transfer the total amount designated to the foundation fund.

**43.4(5) Limitation of checkoffs on the individual income tax return.** For tax years beginning on or after January 1, 1995, but before January 1, 2004, no more than three checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same three checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed in the aggregate for the first two years and through March 15 of the third tax year will be repealed.

For example, the 1999 Iowa individual income tax return due in 2000 includes checkoffs A, B and C which also were shown on the Iowa returns for 1997, 1998 and 1999. Through March 15, 2000, \$90,000 was contributed on the 1997, 1998 and 1999 returns for checkoff A, \$60,000 was contributed for checkoff B and \$120,000 for checkoff C. Since the least amount contributed in the aggregate was for checkoff B, that checkoff is repealed and will not appear on the 2000 Iowa income tax return to be filed in 2001.

For tax years beginning on or after January 1, 2004, no more than four checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same four checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount has been contributed in the aggregate for the first year and through March 15 of the second tax year will be repealed.

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed. If the same session of the general assembly enacts more checkoffs on the same day than there is space for inclusion on the individual income tax form, the director of revenue shall determine which checkoffs shall be included on the individual income tax form.

**43.4(6) Keep Iowa beautiful fund checkoff.** For tax years beginning on or after January 1, 2001, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the keep Iowa beautiful fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount credited to the keep Iowa beautiful fund will be reduced accordingly. Once the taxpayer has designated a contribution to the keep Iowa beautiful fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend the designation.

A designation to the keep Iowa beautiful checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human

services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the keep Iowa beautiful fund are due, the department of revenue shall transfer the total amount designated to the keep Iowa beautiful fund.

**43.4(7) *Volunteer fire fighter preparedness fund checkoff.*** For tax years beginning on or after January 1, 2004, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer fire fighter preparedness fund, the amount credited to the volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the keep Iowa beautiful fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the volunteer fire fighter preparedness fund are due, the department of revenue is to certify to the state treasurer the amount designated to the volunteer fire fighter preparedness fund on those returns.

**43.4(8) *Veterans trust fund checkoff.*** For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the veterans trust fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the veterans trust fund, the amount credited to the veterans trust fund will be reduced accordingly. Once the taxpayer has designated a contribution to the veterans trust fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the veterans trust fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the veterans trust fund are due, the department of revenue shall transfer the total amount designated to the veterans trust fund.

**43.4(9) *Joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff.*** For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund, the amount credited to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the veterans trust fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the keep Iowa beautiful fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.

**43.4(10) *Child abuse prevention program fund checkoff.*** For tax years beginning on or after January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the child abuse prevention program fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the child abuse prevention program fund, the amount credited to the child abuse prevention program fund will be reduced accordingly. Once the taxpayer has designated a contribution to the child abuse prevention program fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the child abuse prevention program fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the child abuse prevention program fund are due, the department of revenue shall transfer the total amount designated to the child abuse prevention program fund.

**43.4(11) *Joint veterans trust fund and volunteer fire fighter preparedness fund checkoff.*** For tax years beginning on or after January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of \$1 or more to the joint veterans trust fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint veterans trust fund and volunteer fire fighter preparedness fund, the amount credited to the joint veterans trust fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint veterans trust fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the joint veterans trust fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation fund checkoff and the child abuse prevention program fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint veterans trust fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the veterans trust fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, and 422.12H and 2010 Iowa Acts, House File 2531, division XII.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9876B, IAB 11/30/11, effective 1/4/12]

**701—43.5(422) Abatement of tax.** For notices of assessment issued on or after January 1, 1995, if the statutory period for appeal has expired, the director may abate any portion of unpaid tax, penalties or interest which the director determines to be erroneous, illegal, or excessive. See rule 701—7.31(421) for procedures on requesting abatement of tax.

This rule is intended to implement Iowa Code section 421.60.

**701—43.6(422) 1978 Income tax rebate.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—43.7(422) Special refund for taxpayers with net long-term capital gains in the tax year.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—43.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers.** For tax years beginning on or after January 1, 1996, corporate and individual taxpayers who own certain livestock, who have livestock production operations in Iowa in the tax year, and who meet certain qualifications are eligible for a livestock production credit refund. The amount of a livestock production credit refund is determined by adding together for each head of livestock in the taxpayer's operation the product of 10 cents for each corn equivalent deemed to have been consumed by that animal in the taxpayer's operation in the tax year. For tax years beginning on or after January 1, 1998, only qualified taxpayers that have cow-calf livestock operations described in paragraph "o" of subrule 43.8(2) will be eligible for the livestock production refunds, notwithstanding the other types of livestock operations mentioned in this rule. Note that the livestock production credit refund is also available to taxpayers who meet the qualifications described in subrule 43.8(1) and operate certain types of poultry operations in this state and own the poultry in the operations. The amounts of the livestock production credit refunds for these taxpayers are determined on the basis of 10 cents for each corn equivalent deemed to have been consumed by the chickens or the turkeys in the taxpayers' poultry operations in the tax year. However, the amount of livestock production credit refund may not exceed \$3,000 per livestock or poultry operation for a tax year. In addition, the amount of livestock production credit refund per taxpayer for a tax year may not exceed \$3,000. Therefore, if a particular taxpayer is involved in a cow-calf beef operation, a sheep-ewe flock operation, and a farrow-to-finish hog operation, the maximum livestock production credit refund for this taxpayer may not exceed \$3,000.

General references in this rule to livestock, livestock production, and livestock production operations also apply to poultry, poultry production, and poultry production operations.

In the case of married taxpayers, each of the spouses may be eligible for a livestock production refund of up to \$3,000 if each of the spouses was involved in a livestock production operation independently from the other spouse and independently from other taxpayers in the tax year. If both spouses are involved in the same livestock operation, the maximum refund from that operation is \$3,000 which may be allocated between the individuals in the ratio of each spouse's ownership interest in the operation. If a livestock production operation is conducted by a partnership, limited liability company, subchapter S corporation, estate, or a trust, the livestock production credit refund from the entity is to be allocated to the owners of the entity in the same ratio as earnings are allocated to the owners. In situations where a livestock production operation is conducted partly within and partly without Iowa, only the livestock production activity in Iowa during the tax year will be considered for purposes of the livestock credit refund. The livestock production refund amounts for these taxpayers is to be allocated on the basis of sales of Iowa livestock which qualify taxpayers for the livestock production refund to total sales of livestock which qualify taxpayers for the refund. However, the refunds from any operations may not exceed \$3,000. The following subrules outline how the livestock production credit refund program is to be administered by the department of revenue:

**43.8(1) Qualifications for the livestock production credit refunds.** For tax years beginning on or after January 1, 1997, individual and corporate taxpayers will be eligible for the livestock production credit refund if the taxpayer's federal taxable income is \$99,600 or less. In the case of married taxpayers, their combined federal taxable income must be considered to determine if they are eligible for the credit.

For each tax year beginning after 1997, the federal taxable income specified previously in this subrule shall be multiplied by the cumulative index factor for that tax year to calculate the federal taxable income that will be used to determine whether a taxpayer is eligible for the livestock production refund that is authorized for that tax year. "Cumulative index factor" means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The annual index factor equals the annual inflation factor for that calendar year as computed in Iowa Code section 422.4 for purposes of indexation of the tax rates for individual income tax.

**43.8(2)** *Definitions related to the livestock production credit refunds.* The following definitions explain livestock and poultry for purposes of this rule. The definitions also describe the various types of livestock operations of taxpayers which may qualify the taxpayers for the livestock production credit refunds and specify how the refunds are to be computed for the various types of livestock operations:

*a.* For the purposes of this rule, the term "livestock" means domestic bovine animals which will be referred to as bulls, heifers, cattle, calves, or cows in this rule, domestic ovine animals which will be referred to as sheep, lambs, rams, or ewes, or domestic swine which will be referred to as hogs or pigs. That is, for purposes of this rule, "livestock" includes only those farm animals which may qualify their owners for the livestock production credit refund. "Livestock" does not include horses, goats, donkeys, mules, oxen, furbearing mammals, other mammals, or other classes of animals, although some of these animals or species may be considered to be "livestock" in other contexts or situations.

*b.* For purposes of this rule the term "poultry" means only domestic chickens and domestic turkeys as only these types of birds may qualify their owners for the livestock production credit refunds. "Poultry" does not include ducks, geese, wild turkeys, emus, ostriches, or other fowl or birds, although some of these species may be considered to be poultry in other contexts or situations.

*c.* For purposes of this rule, the term "farrow-to-finish" hog operations comprises those hog production operations where the majority of the hogs sold from the operation are from animals farrowed and raised in the operation which are sold at a prime market weight of 200 pounds or more.

In order to compute the livestock production credit refund amounts for the "farrow-to-finish" hog production operations, the corn equivalent factor of 13 per animal sold, or \$1.30, is multiplied by the number of hogs sold at prime market weight in the tax year which were farrowed and raised in the operation. No corn equivalent credits are given for hogs sold at the prime market weight which have been in the operation less than three months on the date of sale. In the "farrow-to-finish" operations, hogs sold at a weight that is less than the prime market weight also are considered for purposes of computing the livestock production credit refund for the operation, but only at the corn equivalent factor of 2.6 or \$.26 per pig sold.

In "farrow-to-finish" hog operations, if any pigs are purchased at the feeder pig weight of less than 60 pounds and are sold at prime market weight (200 pounds or more), see paragraph "e" in this subrule for the corn equivalent factor which applies to these transactions.

*d.* For purposes of this rule, the term "farrow-to-feeder-pig" hog operations includes those operations where essentially all the pigs farrowed in the operation are sold at an average weight of less than 60 pounds per pig, or at "feeder pig" weight.

The potential livestock production credit refunds for these operations are computed by multiplying the corn equivalent factor of 2.6 or \$.26 times the number of pigs sold at the "feeder pig" weight from these operations in the tax year. However, the corn equivalent factor of 13 or \$1.30 per animal sold can be used for hogs sold at the prime market weight (200 pounds or more) from these operations for those animals where there is documentation that the hogs were born and raised in the operation or that the hogs were in the operation for a minimum of three months at the time the hogs were sold.

*e.* The term "finishing feeder pigs" hog operations comprises those operations where the majority of the hogs in this operation are purchased when these animals weighed less than 60 pounds or at the "feeder pig" weight and the animals are sold at the time the animals are at the prime market weight of 200 pounds or more per hog. The potential livestock production credit refunds for these operations are computed by multiplying the corn equivalent factor of 10.4 or \$1.04 times the number of animals sold in the year at the prime market weight. However, only those animals that were in the operation for a minimum of three months at the time the hogs were sold at prime market weight can be considered

for purposes of the livestock production credit refund. Corn equivalent factor credits of 2.6 or \$.26 are given for animals which are purchased at the “feeder pig” weight of less than 60 pounds and were in the operation for a minimum of three months when the hogs were sold at a weight which is less than the prime market weight of 200 pounds or more per hog.

*f.* For purposes of this rule, the term “layer poultry operations” includes operations where the eggs produced by the chickens in the operation are sold for human consumption. The livestock production credit refunds for these operations are computed on the basis of the average number of chickens in the operation in the tax year multiplied by the corn equivalent factor of .88 or \$.088. The average number of chickens in the operation in the tax year is the aggregate of the number of chickens in the operation on the first day in the tax year that the operation was in production and the number of chickens in the operation on the last day of the tax year in which the operation was in production divided by 2.

However, in a situation where the operation was started or was shut down sometime during the tax year, the livestock refund amount otherwise computed must be reduced by 8.33 percent for each month in the tax year in which the operation was not in production. Thus, in the case where the computed livestock refund amount was \$2,000 and the operation was in production for only nine months of the tax year, the adjusted refund amount would be \$1,500 ( $\$2,000 \times .0833 \times (3) = \$500$ ). ( $\$2,000 - 500 = \$1,500$ )

*g.* For purposes of this rule, the term “turkey production operations” means operations involved in raising domestic turkeys for sale for human consumption and where the turkeys are sold at a prime market weight. The prime market weight for male or tom turkeys is between 30 and 35 pounds. The prime market weight for hen turkeys is between 22 and 25 pounds. The livestock production credit refund for this type of operation is computed by multiplying the number of turkeys sold in the tax year at the prime market weight times the corn equivalent factor of 1.5 or \$.15. However, only those turkeys that were in the operation for a minimum of three months on the date the turkeys were sold may be considered for purposes of computing the livestock production credit for the turkey operation.

*h.* For purposes of this rule, the term “broiler poultry operations” means poultry production operations whereby the chickens raised in the operations are sold for human consumption at a prime market weight or broiler weight between 3 pounds and 6 pounds depending on the breed or breeds of chickens. The livestock production credit refund for this type of operation is computed by multiplying the number of chickens sold in the tax year at broiler weight by the corn equivalent factor of .15 or \$.015. However, only chickens that are in the broiler operation for a minimum of six weeks before the chickens are sold at broiler weight may be considered for purposes of computing the livestock production credit for these operations.

*i.* Rescinded IAB 5/6/09, effective 6/10/09.

*j.* For purposes of this rule, “stocker cattle operations” are beef cattle operations where essentially all cattle in the operations are purchased as calves, raised in the operation at least two months, and the cattle are sold in a range from 700 to 900 pounds per head which is deemed to be the “stocker weight.” Cattle in the operation that were sold at a weight of less than 700 pounds may not be counted for purposes of computing the livestock production credit refund for the operation. The livestock production credit refunds for these operations is computed on the basis of the number of cattle sold in the year at the stocker weight times the corn equivalent factor of 41.5 or \$4.15 per head. Cattle sold in the tax year must be reported on a first-in, first-out basis unless records of the taxpayer can support a different order of sale of the animals. If this operation includes calves that were raised on the farm where they were born, these calves qualify for the corn equivalent factor of 41.5 or \$4.15 per head if the calves were unsold at the end of the tax year and the calves were in the operation for a minimum of two months after the calves were weaned.

*k.* For purposes of this rule, “beef feedlot operations” include those beef cattle operations whereby the cattle are purchased as calves approximately 60 days from the time the calves were weaned or at a “stocker weight” and are sold at a feedlot weight of 900 pounds or more after a three-month period when the animals were on a high concentrate diet. Note that any animals which are purchased for the operation and are maintained in the herd for less than four months at the time of sale do not qualify the taxpayer for the livestock production credit refund of \$7.50 per head of cattle sold. The livestock production

credit refund for these operations is computed by multiplying the number of cattle sold in the year at the feedlot weight times the corn equivalent amount of 75 or \$7.50 per animal. However, if any cattle in the operation are sold at the “stocker” weight of at least 700 pounds but less than 900 pounds, these animals may be counted for the livestock production credit refund at a corn equivalent amount of 41.5 or \$4.15 per head of cattle sold to the extent the cattle were in the operation for two months or more at the time of sale. If any cattle in the operation in the tax year were sold at a weight of less than 700 pounds, the sales of these cattle may not be counted for the livestock production credit refund. Cattle sold in the tax year must be reported on a first-in, first-out basis unless records of the taxpayer can support a different order of sale of the cattle.

*l.* For purposes of this rule, “dairy cattle operations” includes those cattle operations where the primary purpose of the operations is the production of milk and milk products for human consumption. The livestock production credit refund is computed by multiplying the aggregate of the number of milking cows in lactation on December 31 of the tax year and the number of cows bred to calve within 60 days of December 31 and the number of breeding bulls in inventory on December 31 times the corn equivalent number of 350 or \$35 per cow. However, cattle that were purchased in the period between July 1 and December 31 of the calendar year may not be considered for purposes of computation of the livestock production credit for the dairy operation. In the case of a “dairy cattle operation” which started or ceased production in the tax year, the livestock production credit refund otherwise computed must be reduced by 8.33 percent for each month in the tax year in which the livestock operation was not in production. Heifers in the operation are not counted for purposes of the credit until the animals are bred to calve.

*m.* For purposes of this rule, “ewe flock sheep operations” are sheep operations whereby the majority of the sheep and lambs sold from the operation were born and raised in the operation. The livestock production credit refunds for these operations are computed by multiplying the number of ewes and rams in inventory on December 31 of the tax year times the corn equivalent factor of 20.5 or \$2.05 per ewe or ram. Any ewes or rams purchased within three months before December 31 of the tax year may not be considered for purposes of computing the livestock production credit for the operation. In addition, lambs sold in the tax year from the operation may be counted for the production credit refund at 4.1 corn equivalents or \$.41 for each lamb sold to the extent the lambs were in the operation for a minimum of three months prior to the date of sale.

*n.* For purposes of this rule, “sheep feedlot operations” are sheep production operations where lambs born and raised in the operation are sold after the lambs have been in the operation for a minimum of three months prior to the date of sale. The livestock production credit refunds are computed by multiplying the number of lambs sold in the tax year times the corn equivalent factor of 4.1 or \$.41.

*o.* For the purposes of this rule and for tax years beginning on or after January 1, 1998, “cow-calf operations” means those livestock cattle production operations that include bred cows, bred heifers, and breeding bulls. The livestock production credit refunds for cow-calf operations are determined only on the number of bred cows, bred heifers, and breeding bulls in inventory of the operations on December 31 of the tax year times the corn equivalent factor of 111.5 or \$11.15. However, only those bred cows, bred heifers, and breeding bulls in inventory on December 31 which were also in inventory on July 1 of the same calendar year may be counted for purposes of computing the livestock production refunds.

**43.8(3) Filing claims for the livestock production credit refunds.** Taxpayers who are eligible for the livestock production credit refunds must file refund requests on claim forms provided by the department that must be attached to their income tax returns for the tax year in which the livestock production occurred. The claim forms must be filed with the income tax returns within ten months after the end of the tax year of the return in order for the refund claims to be timely. Thus, in the case of a taxpayer filing a livestock production refund claim form with the 1996 Iowa income tax return for calendar year 1996, the claim forms must be filed by October 31, 1997, in order for the claims to be timely. Taxpayers may not request extensions for filing claims for the livestock production refunds.

The department will determine by February 28 of the year after the year in which the livestock production credit refund claims are to be filed if the total amount requested on the refund claims exceeds the amount appropriated for the refunds for that tax year. If a taxpayer’s refund claim is not payable on

February 28 because the taxpayer is a fiscal year filer, that taxpayer's claim will be considered to be a claim for the following tax year. However, in order for this claim to be considered to be a valid refund claim for the following tax year, the refund claim must have been filed within ten months after the end of the fiscal year of the taxpayer. However, in the case of livestock production credit refund claims for fiscal year periods beginning in 1996 which are not received soon enough to be considered for the refunds to be issued in February 1998, only claims for cow-calf livestock production operations will be considered with the livestock production refund claims for the 1997 tax year.

If a taxpayer files a fraudulent claim for a livestock production credit refund for a tax year, the taxpayer will be considered to have forfeited any right or interest to a livestock production refund for any subsequent tax year after the year of the fraudulent claim.

**43.8(4)** *Records needed to establish livestock production credit refunds.* The burden is on the taxpayer to maintain those records and documents which support the livestock production credit refund that was claimed by the taxpayer. Necessary records and documents must include, but are not limited to, the ones mentioned in this subrule. Some of the necessary records are inventory schedules showing the number of livestock or poultry in the livestock operation on certain dates in the tax year. Sales of livestock or poultry in the tax year must be supported by scale tickets, packing house invoices, sales receipts, sales barn invoices, and similar documents. Dairy herd improvement association records and similar inventory forms can be used to establish the number of animals or the number of birds on hand in the operation on a certain day in the tax year. These documents are not to be submitted with the taxpayer's income tax return with the livestock production credit refund claim form. Instead, the documents are to be retained with other tax records for at least three years in case of possible audit by the department of revenue.

**43.8(5)** *Repeal of the livestock production credit refund.* The livestock production credit was repealed on November 1, 2008, for refund claims filed on or after that date. Any livestock production credit refunds requested on Iowa tax returns filed on or after November 1, 2008, will not be issued.

This rule is intended to implement Iowa Code sections 422.120, 422.121, and 422.122 as amended by 2009 Iowa Acts, Senate File 478, section 152.

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<sup>◊</sup> Two or more ARCs



TITLE VI  
CORPORATION  
CHAPTER 51  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—51.1(422) Definitions.**

**51.1(1)** When the word “department” appears herein, it 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 word “tax” is the “corporation income tax”; and the word “return” is the “corporation income tax return.”

The administration of the corporation income tax is a responsibility of the department. The department is charged with the administration of the corporation income tax, subject always to the rules, regulations and direction of the director.

**51.1(2)** The term “corporation” as used in divisions II and III of Iowa Code chapter 422 and in these rules includes not only corporations which have been created or organized under the laws of Iowa, but also those which are qualified to do, or are doing business in Iowa, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory or district or of a foreign country. The term “corporation” is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation, for federal income tax purposes under the Internal Revenue Code, as amended, shall be considered to be a corporation for the purposes of Iowa income tax on corporations. For tax years beginning on or after January 1, 1987, the term “corporation” includes publicly traded partnerships which are taxed as corporations under the Internal Revenue Code. For tax years beginning on or after July 1, 1994, the term corporation includes limited liability companies taxed as corporations under the Internal Revenue Code. For tax years beginning on or after January 1, 1997, the term “corporation” includes partnerships taxed as corporations under the Internal Revenue Code.

**51.1(3)** The term “association” is not used in the law in any narrow or technical sense. It includes any organization created for the transaction of designated affairs, or the attainment of some object, which like a corporation continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint stock association or company, a business trust, a Massachusetts trust, a common law trust, a partnership association, and any other type of organization, by whatever name known, which is not, within the meaning of the law, a trust or an estate, or a partnership. An investment trust of the type commonly known as a management trust is an association, and a trust of the type commonly known as a fixed investment trust, is an association if there is power under the trust agreement to vary the investment of the certificate holders. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

**51.1(4)** The term “Internal Revenue Code” means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

**51.1(5)** The terms “consolidation” and “corporate merger” have the following meaning in regard to corporate reorganizations. A “consolidation” is unification of two or more constituent corporations into a single newly existing corporation in which the new corporation takes over assets and assumes liabilities of constituent corporations which pass out of existence; a “corporate merger” is distinguished

by continuing existence of one of the constituent corporations into which other corporations are merged. *Handley v. Wyandotte Chemicals Corp.*, 352 N.W.2d 447, 450, 118 Mich. App. 423.

This rule is intended to implement Iowa Code section 422.32 as amended by 1997 Iowa Acts, House File 266.

#### **701—51.2(422) Statutes of limitation.**

##### **51.2(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 return such 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 limitation 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 periods 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, Iowa Department of Revenue, 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 corporation income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer’s income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer’s income, a copy of the revenue agent’s tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

g. In lieu of the above periods 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 limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

*h.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

**51.2(2)** *Waiver of statute of limitations.* Rescinded IAB 11/24/04, effective 12/29/04.

**51.2(3)** *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

**51.2(4)** *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 sections 422.25, 422.30, and 422.35.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

#### **701—51.3(422) Retention of records.**

**51.3(1)** Every corporation subject to the tax imposed by Iowa Code section 422.33 (whether or not the corporation incurs liability for the tax) shall retain its books and records as required by Section 6001 of the Internal Revenue Code and Treasury Regulation Section 1.6001-1(e) including the federal schedules required by 701—subrule 52.3(3). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**51.3(2)** In addition, records relating to the computation of the Iowa apportionment factor, allocable income, other deductions or additions to federal taxable 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 limitation 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]

**701—51.4(422) Cancellation of authority to do business.** If a corporation required by Iowa Code section 422.40 to file any report or return (including returns of information at source) or to pay any tax or fee, fails to do so within 90 days after the time prescribed for making such returns or payment, the director may certify such fact to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights to such corporation to carry on business in the state of Iowa as a corporation shall thereupon cease. The statute provides for a penalty of not less than \$100 nor more than \$1,000 for any person or persons who continue to exercise or attempt to exercise any powers, privileges, or franchises granted under articles of incorporation or certificate of authority after cancellation of the same.

This rule is intended to implement Iowa Code section 422.40.

**701—51.5(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 to the satisfaction of the department the validity and correctness of such deduction. 71 Am. Jur. 2d State and Local Taxation, Subsection 518 (1973).

This rule is intended to implement Iowa Code section 422.35.

**701—51.6(422) Jeopardy assessments.**

**51.6(1)** A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

**51.6(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.

**701—51.7(422) Information confidential.** Iowa Code sections 422.20 and 422.72 apply generally to the director, deputies, auditors, examiners, 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 422.20, 422.38, and 422.72.

**701—51.8(422) Power of attorney.** For information regarding power of attorney, see rule 701—7.34(421).

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—51.9(422) Delegation of authority to audit and examine.** Pursuant to statutory authority the director delegates to the 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 422.71.

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CHAPTER 52  
FILING RETURNS, PAYMENT OF TAX,  
PENALTY AND INTEREST, AND TAX CREDITS  
[Prior to 12/17/86, Revenue Department[730]]

**701—52.1(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.

**52.1(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). 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.

**52.1(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.

**52.1(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.

**52.1(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). 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.

**52.1(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. 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. For tax years beginning on or after January 1, 2008, 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.

**52.1(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, subsection 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.

**52.1(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.

**52.1(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.

**52.1(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.

**52.1(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]

#### **701—52.2(422) Time and place for filing return.**

**52.2(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 excepting 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 a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, 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.

**52.2(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.

**52.2(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.

**52.2(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.

#### **701—52.3(422) Form for filing.**

**52.3(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.

**52.3(2) Form for filing—domestic corporations.** A domestic corporation, as defined by Iowa Code subsection 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. However, the corporation may substitute a copy of the true and accurate federal income tax return as filed with the Internal Revenue Service in lieu of certain Iowa return schedules. This substitution is optional, but in all instances a detailed computation of the federal tax liability actually due the federal government shall be required as a part of the Iowa return. The Iowa schedules subject to the substitution provision are: income statement, balance sheet, reconciliation of income per books with income per return and analysis of unappropriated retained earnings per books.

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.

**52.3(3) Form for filing—foreign corporations.** Foreign corporations, as defined by Iowa Code subsection 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.

**52.3(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.

#### **701—52.4(422) Payment of tax.**

**52.4(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.

**52.4(2) Full estimated payment on original due date.** Rescinded IAB 3/15/95, effective 4/19/95.

**52.4(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.

**52.4(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.

**52.4(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.

**52.4(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.

**701—52.5(422) Minimum tax.**

**52.5(1)** Rescinded IAB 11/24/04, effective 12/29/04.

**52.5(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 subsection 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	\$174,695
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	\$222,695
less NOL carryforward*	<147,000>
Iowa alternative taxable income	\$ 75,695
less exemption amount	<40,000>
Total	\$ 35,695
Times 7.2%	2,570
Less regular tax	<1,715>
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	2,570
Iowa taxable income before NOL carryforward	\$ 174,695
less NOL carryforward	<147,000>
	\$ 27,695
less NOL carryback from 1988 <sup>1</sup>	<148,840>
NOL carryforward	\$ <121,145>
Alternative Minimum Tax	
Iowa taxable income before NOL	\$ 174,695
add preferences and adjustments	48,000
Total	\$ 222,695
less NOL carryforward from pre-1987 tax year	<147,000>
Total	\$ 75,695
less alternative minimum tax NOL <sup>2</sup>	<68,126>
Total	\$ 7,569
less exemption	<40,000>
Alternative minimum taxable income after NOL	\$ -0-

<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	<u>&lt;2,570&gt;</u>
Iowa NOL	\$<148,840>

<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 ( $\$75,695 \times 90\% = \$68,126$ ).

**52.5(3)** Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

**52.5(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 less credits 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 \$2,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax less credits 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 less credits 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 less credits 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 less nonrefundable credits exceeds the tentative minimum tax shall be computed as follows:

$$\frac{\left[ \frac{A}{B} \times C + D \right] \times F}{E} = \text{Separate member's contribution to the amount by which regular income tax less credits set forth in section 422.33 exceeds the tentative minimum tax.}$$

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 less credits 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]

**701—52.6(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.

**701—52.7(422) Research activities credit.** Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a tax credit equal to 6.5 percent of the state's apportioned share of qualifying expenditures for increasing research activities. For purposes of this credit, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal

credit for increasing research activities computed under Section 41 of the Internal Revenue Code. For tax years beginning on or after January 1, 1991, “qualifying expenditures” means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under Section 41 of the Internal Revenue Code as in effect on January 1, 1998. The Iowa research activities credit is made permanent for tax years beginning on or after January 1, 1991, even though there may no longer be a research activities credit for federal income tax purposes. The “state’s apportioned share of qualifying expenditures for increasing research activities” must be the ratio of the qualified expenditures in Iowa to total qualified expenditures times total qualifying expenditures for increasing research activities.

**52.7(1)** *Qualified expenditures in Iowa are:*

*a.* Wages for qualified research services performed in Iowa.  
*b.* Cost of supplies used in conducting qualified research in Iowa.  
*c.* Rental or lease cost of personal property used in Iowa in conducting qualified research. Where personal property is used both within and without Iowa in conducting qualified research, the rental or lease cost must be prorated between Iowa and non-Iowa use by the ratio of days used in Iowa to total days used both within and without Iowa.

*d.* Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed in Iowa.

**52.7(2)** *Total qualified expenditures are:*

*a.* Wages paid for qualified research services performed everywhere.  
*b.* Cost of supplies used in conducting qualified research everywhere.  
*c.* Rental or lease cost of personal property used in conducting qualified research everywhere.  
*d.* Sixty-five percent of contract expenses paid by a corporation to a qualified organization for basic research performed everywhere.

Qualifying expenditures for increasing research activities is the smallest of the amount by which the qualified research expenses for the taxable year exceed the base period research expenses or 50 percent of the qualified research expenses for the taxable year.

A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research expenditures on the shareholder’s individual income tax return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation’s Iowa credit for increasing research expenditures and the shareholder’s pro-rata share. The shareholder’s pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder’s pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation’s tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the taxpayer for the following year.

**52.7(3)** *Research activities credit for tax years beginning in 2000.* Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities.

*a.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

*b.* In lieu of the credit computed under paragraph 52.7(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years

beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*c.* In lieu of the credit computed under paragraph 52.7(3) "a," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) "b" and the alternative simplified credit described in paragraph 52.7(3) "c," such amounts are limited to research activities conducted within this state. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

*e.* A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research activities on the shareholder's individual return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation's Iowa credit for increasing research activities and the shareholder's pro-rata share. The shareholder's pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder's pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the corporation for the following year.

**52.7(4) *Research activities credit for an eligible business.*** Effective for tax years beginning on or after January 1, 2000, an eligible business may claim a tax credit for increasing research activities in this state during the period the eligible business is participating in the new jobs and income program with the Iowa department of economic development. An eligible business must meet all the conditions listed under Iowa Code section 15.329, which include requirements to make an investment of \$10 million as indexed for inflation and the creation of a minimum of 50 full-time positions. The research credit authorized in this subrule is in addition to the research activities credit described in 701—subrule 42.11(3) or the research credit described in subrule 52.7(3).

*a.* The additional research activities credit for an eligible business is computed under the criteria for computing the research activities credit under 701—subrule 42.11(3) or under subrule 52.7(3), depending on which of those subrules the initial research credit was computed. The same qualified research expenses and basic research expenses apply in computation of the research credit for an eligible business as were applicable in computing the credit in 701—subrule 42.11(3) or 52.7(3). In addition, if the alternative incremental credit method was used to compute the initial research credit under 701—subrule 42.11(3) or 52.7(3), that method would be used to compute the research credit for an eligible business. Therefore, if a taxpayer that met the qualifications of an eligible business had a research activities credit of \$200,000 as computed under subrule 52.7(3), the research activities credit for the eligible business would result in an additional credit for the taxpayer of \$200,000.

*b.* If the eligible business is a partnership, S corporation, limited liability company, estate or trust where the income from the eligible business is taxed to the individual owners of the business, these

individual owners may claim the additional research activities credit allowed to the eligible business. The research credit is allocated to each of the individual owners of the eligible business on the basis of the pro-rata share of that individual's earnings from the eligible business.

**52.7(5) Corporate tax research credit for increasing research activities within an enterprise zone.** Effective for tax years beginning on or after January 1, 2000, for awards made by the Iowa department of economic development prior to July 1, 2010, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). For the amount of the credit for increasing research activities within an enterprise zone for awards made by the economic development authority on or after July 1, 2010, see subrule 52.7(6).

*a.* The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Thirteen percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*b.* In lieu of the credit computed under paragraph 52.7(5) "*a*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning prior to January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 3.30 percent, 4.40 percent, and 5.50 percent, respectively.

*c.* In lieu of the credit computed under paragraph 52.7(5) "*a*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) are 9.10 percent and 3.90 percent, respectively.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) "*b*" and the alternative simplified credit described in paragraph 52.7(3) "*c*" of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

*e.* 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.

**52.7(6) Research activities credit for awards made by the Iowa department of economic development on or after July 1, 2010.** For eligible businesses approved under the enterprise zone program by the Iowa department of economic development when an award is made on or after July 1, 2010, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. This credit for increasing research activities is in lieu of the

research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). The amount of the credit depends upon the gross revenues of the eligible business.

*a.* The credit equals the sum of the following for eligible businesses with gross revenues of less than \$20 million.

(1) Sixteen and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Sixteen and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percentage equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*b.* The credit equals the sum of the following for eligible businesses with gross revenues of \$20 million or more.

(1) Nine and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for research activities.

(2) Nine and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percentage equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*c.* In lieu of the credit computed under paragraphs 52.7(6)“*a*” and “*b*,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code depend upon the gross revenues of the eligible business.

(1) The percentages are 7 percent and 3 percent, respectively, for eligible businesses with gross revenues of less than \$20 million.

(2) The percentages are 2.1 percent and 0.9 percent, respectively, for eligible businesses with gross revenues of \$20 million or more.

*d.* For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative simplified credit described in paragraph 52.7(3)“*c*” of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2011.

*e.* 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.

**52.7(7) Reporting of research activities credit claims.** Beginning with research activities credit claims filed on or after July 1, 2009, the department shall issue an annual report to the general assembly of all research activities credit claims in excess of \$500,000. The report, which is due by February 15 of each year, will contain the name of each claimant and the amount of the research activities credit for all claims filed during the previous calendar year in excess of \$500,000.

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 512.

[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]

**701—52.8(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.

**52.8(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 subsection 96.19(37) 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)

**52.8(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.

**52.8(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.

**701—52.9(422) Seed capital income tax credit.** Rescinded IAB 3/6/02, effective 4/10/02.

**701—52.10(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.

**52.10(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.

**52.10(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 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.

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.

**52.10(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.

**52.10(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 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. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development 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 attached to 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 Iowa department of economic development 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 Iowa department of economic development 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 Iowa department of economic development, so the tax credit certificate is attached to 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 attached to 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 attached to 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 Iowa department of economic development will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members can attach the tax credit certificate to 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 Iowa department of economic development will issue tax credit certificates to each member of the cooperative. The members can attach the tax credit certificate to 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.

**52.10(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 Iowa department of economic development 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 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. 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 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 15.335.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

#### **701—52.11(422) Refunds and overpayments.**

**52.11(1) to 52.11(6)** Reserved.

**52.11(7)** *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(8)** *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(9)** *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(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.

**52.11(11)** *Overpayment—interest accruing before July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(12)** *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.

**52.11(13)** *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

**52.11(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.

**701—52.12(422) Deduction of credits.** The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be deducted in the following sequence.

1. Franchise tax credit.
2. Disaster recovery housing project tax credit.
3. School tuition organization tax credit.
4. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
5. Endow Iowa tax credit.
6. Agricultural assets transfer tax credit.
7. Film qualified expenditure tax credit.
8. Film investment tax credit.
9. Redevelopment tax credit.
10. Investment tax credit.
11. Wind energy production tax credit.
12. Renewable energy tax credit.
13. Redeemed Iowa fund of funds tax credit.
14. New jobs tax credit.
15. Economic development region revolving fund tax credit.
16. Charitable conservation contribution tax credit.
17. Alternative minimum tax credit.
18. Historic preservation and cultural and entertainment district tax credit.
19. Corporate tax credit for certain sales tax paid by developer.
20. Ethanol blended gasoline tax credit or ethanol promotion tax credit.
21. Research activities tax credit.
22. Assistive device tax credit.
23. Motor fuel credit.
24. Wage-benefits tax credit.
25. Soy-based cutting tool oil tax credit.
26. Refundable portion of investment tax credit, as provided in subrule 52.10(4).
27. E-85 gasoline promotion tax credit.
28. Biodiesel blended fuel tax credit.
29. Soy-based transformer fluid tax credit.
30. E-15 plus gasoline promotion tax credit.
31. Estimated tax and payment with vouchers.

This rule is intended to implement Iowa Code sections 15.333, 15.335, 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]

**701—52.13(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.

**701—52.14(15E) Enterprise zone tax credits.** For tax years ending after July 1, 1997, for programs approved after July 1, 1997, a business which qualifies under the enterprise zone program is eligible to receive tax credits. An eligible business under the enterprise zone program must be approved by the Iowa department of economic development and meet the requirements of Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the Iowa department of economic development may be found at 261—Chapter 59.

**52.14(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).

**52.14(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).

**52.14(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).

**52.14(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.

This rule is intended to implement Iowa Code section 15E.193 and Supplement section 15E.196. [ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.15(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 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 Iowa Code section 15E.193B.

**52.15(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.

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 Iowa department of economic development 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 attached to 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 Iowa department of economic development may be found under 261—Chapter 59.

**52.15(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.

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 Iowa department of economic development, 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 Iowa department of economic development 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 Iowa Code Supplement section 15E.193B as amended by 2006 Iowa Acts, chapter 1158.

**701—52.16(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.

**701—52.17(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.

**52.17(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 attached to 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 attach a copy of the certificate of entitlement and the statement of allocation of the assistive device credit to the individual's state income tax return.

**52.17(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.

**52.17(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.

**701—52.18(404A,422) Historic preservation and cultural and entertainment district tax credit.** 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 administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

**52.18(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.

**52.18(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. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural

and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, \$50 million in historic preservation and cultural and entertainment district tax credits is available. The allocation of the \$50 million of credits for the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, is set forth in rule 223—48.7(303,404A). For fiscal years beginning on or after July 1, 2012, \$45 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

*b.* For the state fiscal year beginning on July 1, 2009, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2009, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2010. For the state fiscal year beginning July 1, 2010, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2010, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2011. For the state fiscal year beginning July 1, 2011, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2011, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2012.

*c.* 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.

*d.* The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property.

*e.* Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

**52.18(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 SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, qualified rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, 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. 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.

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.

For 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. However, for tax years beginning only in the 2000 calendar year, the basis of the rehabilitated property would have been \$600,000, since for those tax periods any qualified rehabilitation costs used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property. 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. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would be reduced accordingly by the same amount as the reduction required for federal tax purposes.

**52.18(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 attached to 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 the 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, 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 attached to the income tax return for the period in which the project was completed. If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 2001 which is 11 percent or .594 which results in a refund of \$297,000.

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.

**52.18(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to individual owners of the entity.* When the business entity that has earned a historic preservation and cultural and entertainment district tax credit is an S corporation, partnership, limited liability company, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit is to be allocated to the individual owners. The business entity is to allocate the historic preservation and cultural and entertainment district tax credit to each individual owner in the same pro-rata basis that the earnings or profits of the business entity are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to the shareholder.

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 rehabilitation project, 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 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.

**52.18(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.

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 state historic preservation office of the department of cultural affairs, 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 state historic preservation office shall 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 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.

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.

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 refund shall be discounted as described in subrule 52.18(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2011 Iowa Acts, Senate Files 517 and 521, 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]

**701—52.19(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.

**52.19(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.

**52.19(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.

**52.19(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.

**701—52.20(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.

**701—52.21(15E,422) Venture capital credits.**

**52.21(1)** *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* 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. 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.

The department of revenue will be notified by the Iowa capital investment board or 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 a qualifying business or community-based seed capital 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 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 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 \$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.

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.

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.

**52.21(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.

**52.21(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.

**52.21(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 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 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 \$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 corporation taxpayer whose tax year ending 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 section 15E.66; sections 15E.42, 15E.43 and 422.33 as amended by 2011 Iowa Acts, Senate File 517; and 2011 Iowa Acts, Senate File 517, section 40. [ARC 9104B, IAB 9/22/10, effective 10/27/10; ARC 9966B, IAB 1/11/12, effective 2/15/12]

**701—52.22(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.

**52.22(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).

**52.22(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 Iowa department of economic development 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 attached to 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 Iowa department of economic development 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 is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

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.

**52.22(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]

**701—52.23(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 and subsequent calendar years 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 example, the total amount of endow Iowa tax credits authorized for the 2011 calendar year is \$4,551,813, so the maximum amount of tax credit authorized to a single taxpayer is \$227,590.65 (\$4,551,813 times 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 2011 Iowa Acts, Senate File 302, 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]

**701—52.24(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.

**701—52.25(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.

**52.25(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.

**52.25(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.

**52.25(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.

**52.25(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.

**52.25(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).

**701—52.26(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).

**52.26(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).

**52.26(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 attach the tax credit certificate to 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.

**52.26(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]

**701—52.27(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. 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).

**52.27(1) *Application and review process for the renewable energy tax credit.*** A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy 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, 2015.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts of nameplate generating capacity. 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. 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.

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).

**52.27(2) Computation of the credit.** The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents 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.

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.

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.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. 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(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 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). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

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 renewable energy facility was placed in service on April 1,

2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased or 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, 2024.

To claim the tax credit, the taxpayer must attach the tax credit certificate to 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.

**52.27(3) *Transfer of the renewable energy tax credit certificate.*** 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.

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 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.

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.

**52.27(4) *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).

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by 2011 Iowa Acts, House File 672.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 8605B**, 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]

**701—52.28(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.

**52.28(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).

**52.28(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.

*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 Iowa department of economic development 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 attached to 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 Iowa department of economic development 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.

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.

**52.28(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]

**701—52.29(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]

**701—52.30(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. 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 2017	16 cents

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, for the same tax year for the same ethanol gallons.

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.

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.

**52.30(1) 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, 2018, a taxpayer whose tax year ends prior to December 31, 2017, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2017. 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: 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: 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 times 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.

**52.30(2) Allocation of credit to owners of a business entity.** 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 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—52.31(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 which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, but before 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. 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.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. For

gallons sold during the 2012 calendar year, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and 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. For gallons sold during the 2013 to 2017 calendar years, 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. In determining the minimum percentage by volume of biodiesel, the department will taken 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.

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.

**EXAMPLE:** 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:** 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, and the other site sold 10,000 gallons of biodiesel blended fuel. 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. If the facts in this example had occurred during the 2009 tax year, the taxpayer could 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.

**52.31(1) 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, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2017.

**EXAMPLE:** 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 times 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:** 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: A taxpayer who operates one retail motor fuel site has a fiscal year ending February 28, 2012. The taxpayer sold 100,000 gallons of diesel fuel for the period from March 1, 2011, through February 28, 2012, of which 60,000 gallons was biodiesel blended fuel. For the period from March 1, 2011, through December 31, 2011, 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 \$1,500 (50,000 gallons times 3 cents) on the taxpayer's Iowa income tax return for the period ending February 12, 2012, since the credit is computed only on gallons sold through December 31, 2011.

**52.31(2) Allocation of credit to owners of a business entity.** 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 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—52.32(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.

**52.32(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.

**52.32(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.

**52.32(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]

**701—52.33(175,422) Agricultural assets transfer tax credit.** Effective for tax years beginning on or after January 1, 2007, 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. The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

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 agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development 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 attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2009, the amount of tax credit certificates issued by the Iowa agricultural development authority cannot exceed \$6 million, and the credit certificates will be issued on a first-come, first-served basis.

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 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 agricultural development 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 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.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 473, and section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.34(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.

**52.34(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.

**52.34(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 attach the tax credit certificate to 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.

**52.34(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.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, and Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.35(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.

**52.35(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 attach the tax credit certificate to 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.

**52.35(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.

This rule is intended to implement Iowa Code section 15.393 as amended by 2009 Iowa Acts, Senate File 480, section 4, and Iowa Code section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—52.36(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.

**52.36(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%

Determination Period	More than 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
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.

**52.36(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.

**52.36(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.

**52.36(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.

**52.36(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

gallage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallage 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 gallage 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 gallage of 27,900 is divided by the gasoline gallage 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 gallage, 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 gallage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallage 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]

**701—52.37(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.

**52.37(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.

**52.37(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.

**52.37(3) *Claiming the tax credit.*** The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must attach a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, to 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 attached to federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be attached to 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.

**52.37(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.

**701—52.38(422) School tuition organization tax credit.** Effective for tax years beginning on or after July 1, 2009, 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. The credit is not available for S corporations, partnerships and limited liability companies where the income is taxed directly to the individual shareholders, partners or members. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.30(422).

**52.38(1) *Amount of tax credit authorized.*** 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. Of the \$8.75 million of school tuition organization tax credits authorized for 2012 and subsequent calendar years, no more than 25 percent, or \$2,187,500, can be authorized for corporation income tax taxpayers.

**52.38(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 will 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.

**52.38(3) *Claiming the tax credit.*** The taxpayer must attach the tax credit certificate to the tax return for which the credit is claimed. 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 may 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]

**701—52.39(15,422) Redevelopment tax credit.** 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 may claim a redevelopment tax credit. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for a redevelopment project for the brownfield redevelopment authority which qualifies for the tax credit, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**52.39(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 the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed was \$1 million, and the amount of credits authorized for any one redevelopment project could not exceed \$100,000. For fiscal years beginning July 1, 2011, and subsequent fiscal years, 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.

**52.39(2) *Computation and claiming of the credit.***

*a.* 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).

*b.* Upon completion of the project, the Iowa department of economic development 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(3).

*c.* 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.

*d.* 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).

*e.* To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the 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. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

**52.39(3) *Transfer of the credit.*** The redevelopment tax credit can be transferred 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 describing 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. 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.

This rule is intended to implement Iowa Code section 15.293A as amended by 2011 Iowa Acts, Senate File 514, and section 422.33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9876B, IAB 11/30/11, effective 1/4/12]

**701—52.40(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.

**52.40(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).

**52.40(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.

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]

**701—52.41(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. These programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the film, television and video project promotion program, and the high quality jobs program. Effective for fiscal years beginning on or after July 1, 2010, awards made under these economic development programs cannot exceed \$120 million during a fiscal year. The administrative rules for the aggregate tax credit limit for the Iowa department of economic development may be found at 261—Chapter 76.

This rule is intended to implement 2009 Iowa Code Supplement section 15.119 as amended by 2010 Iowa Acts, Senate File 2380.  
[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.42(16,422) Disaster recovery housing project tax credit.** For tax years beginning on or after January 1, 2011, 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.

**52.42(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.

**52.42(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.

**52.42(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.

**52.42(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 Supplement sections 16.211 and 16.212 and Iowa Code section 422.33 as amended by 2009 Iowa Acts, Senate File 457.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9104B, IAB 9/22/10, effective 10/27/10]

**701—52.43(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 IA138. 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, 2014	3 cents
Gallons sold from January 1, 2015, through December 31, 2017	2 cents

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 for the same tax year for the same ethanol gallons.

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.

**52.43(1) 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, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2017. 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 before 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 times 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, 2018. The taxpayer sold 20,000 gallons of E-15 plus gasoline for the period from March 1, 2017, through February 28, 2018, of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$320 (16,000 gallons times 2 cents) on the taxpayer's Iowa income tax return for the period ending February 28, 2018.

**52.43(2)** *Allocation of credit to owners of a business entity.* 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 422.33 as amended by 2011 Iowa Acts, Senate File 531.

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CHAPTER 54  
ALLOCATION AND APPORTIONMENT  
[Prior to 12/17/86, Revenue Department[730]]

**701—54.1(422) Basis of corporate tax.** Iowa Code section 422.33 imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. For tax years beginning on or after January 1, 1999, Iowa Code section 422.33 imposes a tax on all corporations doing business in Iowa. For corporations or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

For tax years beginning on or after January 1, 1986, the income from the operation of a farm may be allocated and apportioned within and without the state if the business activities of the corporation are carried on partly within and partly without the state. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

See subrule 54.1(4) for the definition of carrying on a trade or business partly within and partly without the state.

**54.1(1) Definition—operation of a farm.** A taxpayer is engaged in the operation of a farm if the taxpayer cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of Iowa Code section 422.33(1), a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the operation of a farm. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the operation of a farm only if the taxpayer participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the operation of a farm. A taxpayer cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the operation of a farm. For the purpose of this subrule, the term “farm” is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A taxpayer is engaged in the operation of a farm if the taxpayer is a member of a partnership engaged in the operation of a farm. The operation of a farm includes the sale of products produced on the farm. The purchase of livestock for feeding purposes and subsequent resale is part of the operation of a farm.

**54.1(2) Definition—property used in the operation of a farm.** Property used in the operation of a farm means land and buildings which are used in the operation of a farm. The land must be used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. For the purposes of this subrule, the term livestock includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive furbearing animals, chickens, turkeys, pigeons, and other poultry. It does not include fish, frogs,

reptiles, and the like. Land used for the sustenance of livestock includes land used for grazing such livestock.

Property used in the operation of a farm means property used in the unitary operations of a farm whether or not the acreage is contiguous.

**54.1(3) Definition—unitary operations of a farm.** Unitary operations of a farm means the operation of one or more tracts of land or the conducting of one or more types of farming operations where the operation of a farm within Iowa is integrated with, dependent upon or contributes to the operations of a farm outside the state.

**54.1(4) Definition—carrying on a trade or business partly within and partly without the state.** Carrying on a trade or business partly within and partly without the state means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a corporation is carrying on a trade or business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of a past or future tax year have no bearing on the current year.

The following nonexclusive list of activities on a non-de minimus basis determined by aggregating all activities if physically carried on in a regular, systematic, and continuing basis by corporate officers or employees or representatives in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

The term “representative” means independent contractors, agents, brokers, and other individuals or entities who act on behalf of or at the direction of the corporation. 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.

- a. The free distribution of product samples, brochures, and catalogues which explain the use of or laud the product, or both.
- b. Negotiation of a price for a product.
- c. Demonstration of how the corporation’s product works.
- d. Delivery of goods to customers by the corporation in its own or leased vehicles.
- e. Audit of inventory levels.
- f. Recruitment, training, evaluation, and management of employees, officers, or representatives.
- g. Intervention/mediation in credit disputes between customers and Iowa-located corporate departments.
- h. Use of hotel rooms and homes for business meetings.
- i. Assistance to wholesalers in obtaining suitable displays for products.
- j. Furnishing of display racks at no charge.
- k. Advice to sellers on the art of displaying goods to the public.
- l. Rental of hotel rooms for short-term display of products.
- m. Mere forwarding of customer questions, concerns, or problems.
- n. Installation or assembly of the corporate product.
- o. Ownership or lease of real estate by the corporation and used for a business purpose.
- p. Solicitation of orders for, or sale of, services or real estate.
- q. Solicitation of sales or sale of tangible personal property (as opposed to solicitation of orders).
- r. Maintenance of a stock of inventory.
- s. Existence of an office or other business location.
- t. Managerial activities.
- u. Collections on regular or delinquent accounts.
- v. Technical assistance and training given to purchaser and user of corporate products.
- w. The repair or replacement of faulty or damaged goods.
- x. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.
- y. Rectification of or assistance in rectifying any product complaints or shipping complaints, for example.

- z. Delivery of corporate merchandise inventory to corporation's distributors or dealers on consignment.
  - aa. Maintenance of personal property.
  - ab. 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.
  - ac. Inspection or verification of faulty or damaged goods.
  - ad. Inspection of the customer's installation of the corporate product.
  - ae. Research.
  - af. Employees' or officers' use of part of their homes or other places as an office if the corporation pays for such use.
  - ag. The use of samples for replacement or sale; storage of such samples at home or in rented space.
  - ah. Removal of old or defective products.
  - ai. Verification of the destruction of damaged merchandise.
  - aj. Repair or warranty work on company goods or products after sale.
  - ak. Any other activities carried on in advancement, promotion, or fulfillment of the business of the corporation.

Some of the above activities may not create a tax liability in another state because of the protections afforded by Public Law 86-272, 15 USCA Sections 381-385, which prohibit the taxation of a corporation if its only activities in the state are the solicitation of orders which are approved and filled by shipment or delivery from outside the state. Irrespective of whether the corporation is taxable in another state, it may apportion its income if it carries on one or a combination of the above activities in a regular and continuing basis by corporate officers or employees in at least one other state.

The mere shipment of goods via common carrier or the United States Postal Service to non-Iowa destinations does not constitute doing business partly within and partly without the state. *Irvine Co. v. McColgan*, 26 Cal.2d 160, 157 P.2d 847 (1945); *W.J. Dickey & Sons, Inc. v. State Tax Commission*, 212 Md. 607, 131 A.2d 277 (1957); *State of Georgia v. Coca-Cola Bottling Co.*, 214 Ga. 316, 104 S.E.2d 574 (1958); *E.F. Johnson Company v. Commissioner of Taxation*, 224 N.W.2d 150 (Minnesota 1975); 1980 O.A.G. 588, and *Kuehn to Bair #85-5-53(L)*.

For tax years beginning on or after January 1, 1989, a corporation domiciled in this state whose trade or business is carried on partly within and partly without the state or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real or tangible property located or having a situs within and without the state.

The term "tangible property having a situs without the state" means that a tangible property is habitually present in a state other than Iowa or it maintains a fixed and regular route through another state sufficient that the other state 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. 155 (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.

For tax years beginning on or after January 1, 1995, a corporation whose trade or business is carried on partly within and partly without the state of Iowa or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real, tangible, or intangible property located or having situses within and without the state.

This rule is intended to implement Iowa Code section 422.33(1) as amended by 1999 Iowa Acts, chapter 151.

#### **701—54.2(422) Allocation or apportionment of investment income.**

**54.2(1)** The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business

or nonbusiness income. Interest, dividends, rents, and royalties shall be apportioned as business income to the extent the income was earned as a part of a corporation's unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether investment income is part of a corporation's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

**54.2(2)** All business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include business investment income where the election would result in an understatement of net income reasonably attributable to Iowa.

For a tax year which begins on or after January 1, 1984, if the taxpayer has investment income which is deemed to be business income under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for all future tax years.

If the taxpayer makes an election to include investment income deemed to be business income in the computation of the denominator of the business activity ratio, the computation of the business activity ratio is as follows:

*a.* Interest income from accounts receivable. Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. Ten thousand dollars would be included in the denominator of the business activity formula, and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.

*b.* Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

*c.* Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

*d.* Rental income. All rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable

year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

*e.* Royalty income. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

*f.* Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

The property has a situs in this state at the time of sale; or

The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gains or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

(4) All gains or loss shall be included in the denominator of the activity ratio.

Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

*g.* Other miscellaneous income. All other miscellaneous income determined to be business income shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense.

*h.* Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

Subrules 54.2(1) and 54.2(2) are effective for tax years beginning on or after January 1, 1983.

**54.2(3)** For tax years beginning on or after January 1, 1995, all investment income that is business income, including capital gains or losses, shall be included in the computation of the denominator of the business activity formula if the investment income is derived from intangible property that has become an integral part of some business activity occurring regularly in or outside of Iowa. See subrule 52.1(4). All other investment business income, including capital gains or losses, may at the taxpayer's election be included in the computation of the denominator of the business activity formula provided, however, that a taxpayer cannot elect to exclude or include investment business income where the election could result in an understatement of net income reasonably attributable to Iowa. A taxpayer cannot elect to include some investment business income in and exclude other investment business income from the business activity formula. The election applies to all investment income of the taxpayer subject to the election.

For a tax year which begins on or after January 1, 1995, if the taxpayer has investment income subject to an election under the provisions of this rule, a written election shall be made. The election must state whether the taxpayer wishes to include or exclude investment income which is deemed to be business income subject to election under the provisions of this rule in the computation of the business activity formula. The election shall be signed by a duly authorized officer of the corporation. The election is binding on all future tax years unless the taxpayer is granted permission by the director to change the election. If the taxpayer fails to make a written election, the fact that investment income was or was

not included in the computation of the business activity formula shall be deemed to be the taxpayer's election for future years.

The computation of the business activity formula associated with investment income is as follows where the investment income is required to be included in the business activity formula or where an election for inclusion has been made:

*a. Interest income from accounts receivable.* If an inclusion election is made, accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. \$10,000 would be included in the denominator of the business activity formula, and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.

*b. Interest income other than accounts receivable.* All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula to the extent that the interest-bearing asset is an integral part of some business activity occurring regularly in Iowa. If the interest-bearing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the interest therefrom (except nontaxable interest income) shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns interest income from loans to affiliated corporations, commercial paper, bonds issued by multistate corporations, and federal income tax refunds. The interest income is business income. None of these interest-bearing assets are an integral part of some business activity occurring regularly within or without Iowa. Accordingly, the interest income produced by such assets is subject to an election of inclusion in or exclusion from the business activity formula.

*c. Dividend income.* All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula to the extent that the dividend asset is an integral part of some business activity occurring regularly in Iowa. If the dividend asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the dividends shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: The taxpayer earns dividend income from dividends payable from a mutual fund. The dividend income is business income. The dividends are not an integral part of some business activity occurring regularly within or without Iowa. Assume that the taxpayer had also earned interest income which was business income and which was not an integral part of some business activity occurring regularly within or without Iowa and that the taxpayer had included that interest income in the business activity formula. Under these circumstances, the taxpayer must also include the dividend income in the business activity formula. If no inclusion of investment business income had been made in the business activity formula, the taxpayer would exclude the dividend income from the formula.

*d. Rental income.* If an inclusion election is made, all rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

*e. Royalty income and licensing fees.* All royalty income and licensing fees from intangible personal property determined to be business income shall be included in the numerator of the business activity formula to the extent that the royalty or licensing asset is an integral part of some business activity occurring regularly in Iowa. If the royalty or licensing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the royalties or licensing fees shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

EXAMPLE: A, a corporation with a commercial domicile outside of Iowa, derives royalties from a trade name that is used by other corporations doing business in Iowa in their Iowa businesses. Since the royalty asset is an integral part of an Iowa business activity, A must include the royalties associated with Iowa business activity in the numerator of A's business activity formula.

EXAMPLE: The taxpayer, a corporation with a commercial domicile in Iowa, derives license fees from others who do business solely outside of Iowa. The license fees are business income. The license fees are an integral part of some business activity carried on regularly by the others outside of Iowa. The taxpayer must include the license fees in the business activity formula. If the taxpayer also had other license fees which were business income and which were not an integral part of some business activity occurring regularly within or without Iowa, these other license fees would be subject to an election of inclusion in or exclusion from the business activity formula.

If an inclusion election is made, all royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

*f. Gains or losses.* Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa, shall be apportioned by the business activity ratio applicable to the return for the year the gain or loss is included in taxable income and shall be included in the computation of the business activity ratio as follows:

(1) Gain or loss from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state and if an election of inclusion has been made.

(2) Gain or loss from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if an election of inclusion has been made and if the property has a situs in this state at the time of sale, or the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Gain or loss from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator of the business activity formula to the extent that the intangible personal property is an integral part of some business activity occurring regularly in Iowa in the tax year that gain or loss is recognized. If the intangible personal property is not an integral part of some business activity occurring regularly in or outside of Iowa in the tax year that gain or loss is recognized and if an election of inclusion has been made, the gain or loss shall be included in the numerator if the taxpayer's commercial domicile is in this state.

EXAMPLE: The taxpayer carries on its trade or business within and without Iowa. The taxpayer has patents which it licenses others to use in activities within and without Iowa. The patents are an integral part of business activity occurring regularly within and without Iowa. The taxpayer receives royalty income for the use of the patents. The taxpayer sells the patents and realizes a capital gain. The capital gain from the sale of the patents cannot be segregated by geographical source. Assume that the taxpayer is on a calendar tax year. Assume that the sale occurred on July 1. From January 1 to July 1, 5 percent of the royalties were attributable to some business activity regularly occurring in Iowa. The taxpayer should include 5 percent of the capital gain in the numerator of the business activity formula.

(4) All gain or loss shall be included in the denominator of the business activity ratio if an election of inclusion has been made or if the gain or loss is required to be included in the business activity ratio.

Noninclusive examples of gains or losses from the sale, exchange, or other disposition of real or tangible or intangible property may not be included in the computation of the business activity ratio, because to do so would result in an understatement of net income reasonably attributable to Iowa and

would include the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code and the gain recognized under Section 631(a) of the Internal Revenue Code.

*g. Other miscellaneous income.* All other miscellaneous income determined to be business income which is not subject to an election or which is the subject of a proper election of inclusion shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense. The miscellaneous income shall be included in the numerator of the business activity formula if the income is from an Iowa source.

*h. Other investment income.* All other investment income shall be included in the numerator of the business activity formula to the extent that the intangible personal property which produced that income is an integral part of some business activity occurring regularly in Iowa. If the intangible personal property is not part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the other investment income shall be included in the numerator if the taxpayer's commercial domicile is in this state.

*i. Activity ratio.* Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

**54.2(4)** Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, gross-up (Section 78 of the Internal Revenue Code) shall be considered to be nonbusiness income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payor.

This rule is intended to implement Iowa Code Supplement sections 422.32(2) and 422.33(1).

**701—54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978.** Rule 54.2(422) deals with the separation of “net” income; therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related, including related federal income taxes. *Allphin v. Joseph E. Seagram & Sons*, 204 S.W. 2d 515 (Ky. 1956). For tax periods beginning on or after January 1, 2000, related expense includes both directly related expense and indirectly related interest expense. The portion of interest expense indirectly related to allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties shall be determined by multiplying the net amount of interest expense, after deducting interest directly related to an item of income, by a ratio. The numerator of the ratio is the average value of investments which produce or are held for the production of allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties. The denominator is the average value of all assets of the taxpayer, less securities of states and their political subdivisions. (*Hunt-Wesson, Inc. v. Franchise Tax Board of California*, No. 98-2043 (U.S. Sup. Ct., filed February 22, 2000)).

A “directly related expense” shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows: (1) the indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property; (2) the proceeds of the borrowing were actually applied to the specified purpose; (3) the creditor can look only to the specific property (or any lease or other interest therein) as security for the loan; (4) it may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and (5) there are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in (3) and (4) above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of such facts and circumstances are not present in substance. Any expense directly or indirectly attributable to allocable interest, dividends, rents and royalties shall be deducted from such income to arrive at net allocable income.

EXAMPLE (i): For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

Interest expense	\$1,200,000
Property taxes	500,000
Depreciation	500,000
Electricity	300,000
Heat	200,000
Insurance	150,000
Janitorial services	100,000
Repairs	50,000
Total expense	<u>\$3,000,000</u>

The directly related expense of the allocable nonbusiness rental income is \$3,000,000.

EXAMPLE (ii): For purposes of this example, it is assumed that the taxpayer has nonbusiness income. The taxpayer is a multistate manufacturer of processed foods. It has a nonbusiness investment portfolio which is managed by an investment firm for a fee. The fee paid for the management of the portfolio is a directly related expense to the dividends and interest income received. The fee is attributed to the various types of income on the ratio that the various types of income bear to the total income produced.

EXAMPLE (iii): Same as example (ii), except that in addition to the investments described, the taxpayer also has investments in oil properties. The depletion expense is a directly related expense to the oil royalty income.

This rule is intended to implement Iowa Code section 422.33.

**701—54.4(422) Net gains and losses from the sale of assets.** For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

Nonbusiness gain or loss from the sale, exchange or other disposition of property if the property while owned by the taxpayer was not operationally related to the taxpayer's trade or business carried on in Iowa shall be allocated as follows:

**54.4(1)** Gains or losses from the sale, exchange or other disposition of real property located in this state are allocable to this state.

**54.4(2)** Gains and losses from the sale, exchange or other disposition of tangible personal property are allocable to this state if:

*a.* The property had a situs in this state at the time of sale; or

*b.* The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

**54.4(3)** Gains or losses from the sale, exchange or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

**54.4(4)** Gains or losses from the sale, exchange or other disposition of stock of another corporation, if the activities of the other corporation were not operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer, are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code Supplement section 422.33(1).

**701—54.5(422) Where income is derived from the manufacture or sale of tangible personal property.** The law specifically provides but one method for apportioning net income derived from the manufacture or sale of tangible personal property. The part of such income attributable to business within the state shall be that proportion which the gross sales made within the state bear to the total gross sales.

In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

When a taxpayer is engaged in manufacturing and selling or purchasing and reselling goods or products “gross sales” includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. “Gross receipts” for this purpose means gross sales, less returns and allowances. Federal and state excise taxes shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

**54.5(1)** Sales of tangible personal property are in this 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 sales.

**54.5(2)** Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

EXAMPLE: The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser’s central purchasing department located in State B. Twenty-five thousand dollars of the purchase order was shipped directly to purchaser’s branch store in this state. The branch store in this state is the “purchaser within this state” with respect to \$25,000 of the taxpayer’s sales.

**54.5(3)** Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

EXAMPLE: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer’s products shipped to a purchaser’s warehouse in this state are property “delivered or shipped to a purchaser within this state”.

**54.5(4)** The term “purchaser within this state” shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

EXAMPLE: A taxpayer in this state sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser’s customer in this state pursuant to purchaser’s instructions. The sale by the taxpayer is in this state.

**54.5(5)** When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

EXAMPLE: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser’s place of business in State B. While en route the produce is diverted to the purchaser’s place of business in this state. The sale by the taxpayer is attributed to this state.

**54.5(6)** Deliveries for transportation outside the state. The taxpayer sells merchandise to a purchaser outside this state, and the purchaser picks up the produce or makes arrangements to have the product picked up at the taxpayer’s place of business in this state to be taken outside the state. The sale by the taxpayer is a sale outside this state.

**54.5(7)** Dock or pickup sales. The taxpayer sells merchandise to a purchaser within this state, and the purchaser picks up the product at the taxpayer’s place of business outside of this state. The sale by the taxpayer is a sale in this state. *Pabst Brewing Co. v. Wis. Dept. of Revenue*, 387 N.W.2d 121 (Wis. App. 1986); *Strickland v. Patcraft Mills, Inc.*, 302 S.E.2d 544 (Ga. 1983); *Olympia Brewing Company v. Commissioner of Revenue*, 326 N.W.2d 642 (Minn. 1982); *Department of Revenue v. Parker Banana Company*, 391 So. 2d 762 (Fla. App. 1980); *Department of Revenue v. U.S. Sugar Corporation*,

388 So. 2d 596 (Fla. App. 1980). This subrule is effective for tax years beginning on or after January 1, 1989.

This rule is intended to implement Iowa Code section 422.33.

**701—54.6(422) Apportionment of income derived from business other than the manufacture or sale of tangible personal property.** Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in the proportion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are includable in the numerator of the apportionment factor in the proportion which the recipient of the service receives benefit of the service in this state.

**54.6(1)** Services other than those set forth in subrules 54.6(3) to 54.6(5) and rule 701—54.7(422). With respect to a specific contract or item of income, all gross receipts from the performance of services are includable in the numerator of the apportionment factor if the recipient of the service receives all of the benefit of the service in Iowa. If the recipient of the service receives some of the benefit of the service in Iowa with respect to a specific contract or item of income, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the service in Iowa.

The following are noninclusive examples of the application of this subrule.

*a.* A real estate development firm from State A is developing a tract of land in Iowa. The real estate development firm from State A engages a surveying company from State B to survey the tract of land in Iowa. The survey work is completed and the plats are drawn in Iowa. The gross receipts from this survey work are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefits of the service in Iowa.

*b.* A corporation headquartered in State Y is building an office complex in Iowa. The corporation from State Y contracts with an engineering firm from State X to oversee construction of the buildings on the site. The engineering firm performs some of their service in Iowa at the building site and also some of their service in State X. The gross receipts from the engineering service are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Iowa.

*c.* A corporation from State A contracts with a computer software company from State D to develop and install a custom software application in a business office in Iowa of the company from State A. The software firm does consulting work on the project in State A and in Iowa. The software development is done in State D and in Iowa. The software package is delivered to the corporation from State A in Iowa. The gross receipts from the software development are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Iowa.

*d.* A corporation located in Iowa performs direct mail activities for a customer located in State X. The direct mail activities include the preparation and mailing of materials to households located throughout the United States. The corporation located in Iowa performed some activities related to the direct mail contract in State X. One percent of the direct mailings went to addresses within Iowa. One percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received the 1 percent of the benefit of the service in Iowa.

*e.* A corporation located in State A performs direct mail activities for a customer located in State X. The corporation has nexus with Iowa due to other activities of the unitary business. The direct mail activities include the preparation and mailing of materials to households throughout the United States. The corporation located in State A printed and mailed the direct mail materials to households on a mailing list prepared by the direct mailing company in State A. Five percent of the direct mailings went to addresses within Iowa. Five percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor.

*f.* A company which owns apartments in Iowa and State A contracts with a pest control corporation for pest control activities. One contract is entered into which covers 100 apartment units in Iowa and 400 apartment units in State A. Twenty percent (100/500) of the gross receipts from the pest

control contract are attributable to Iowa and are included in the numerator of the apportionment factor as 20 percent of the apartment units are located in Iowa and in the absence of more accurate records, it is presumed that the number of apartment units is the best measure of the extent the recipient of the service received benefit of the service in Iowa.

If a taxpayer does not believe that the method of apportionment set forth in this subrule reasonably attributes income to business activities within Iowa, the taxpayer may request the use of an alternative method of apportionment. The request must be filed at least 60 days before the due date of the return, considering any extensions of time to file, in which the taxpayer wishes to use an alternative method of apportionment. The request should be filed with Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. The taxpayer must set forth in detail the extent of the taxpayer's business operations within and without the state, along with the reasons why the apportionment method set forth in this subrule is inappropriate. In addition, the taxpayer must set forth a proposed method of apportionment and the reasons why the proposed method of apportionment more reasonably attributes income to business activities in Iowa.

If the department agrees that the proposed method of apportionment more reasonably attributes income to business activities in Iowa, the taxpayer may continue to use the proposed method of apportionment until the taxpayer's factual situation changes or the department prospectively informs the taxpayer that the method of apportionment may no longer be used.

If the taxpayer's factual situation changes and under the new factual situation the taxpayer still believes that the method of apportionment set forth in this subrule still is not appropriate, then the taxpayer must submit a new request for the use of an alternative method of apportionment.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.8(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

**54.6(2)** If the business activity consists of providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commission, and similar items.

In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts include the entire reimbursed cost, plus the fee.

**54.6(3)** Business income of a financial organization, excepting a financial institution exempted from the corporation income tax under Iowa Code section 422.34(1) attributable to Iowa shall be:

*a.* In the case of taxable income of a taxpayer whose income-producing activities are confined solely to this state, the entire net income of such taxpayer.

*b.* In the case of taxable income of a taxpayer who conducts income-producing activities as a financial organization partially within and partially without this state, that portion of its net income as its gross business in this state is to its gross business everywhere during the period covered by its return, which portion shall be determined as the sum of:

(1) Fees, commission or other compensation for financial services rendered for a customer located in this state or an account maintained within this state;

(2) Gross profits from trading in stocks, bonds or other securities rendered for a customer located within this state;

(3) Interest income from a loan on real property located in this state. Interest and other receipts from assets in the nature of loans and installment obligations if the borrower is located within this state. Other fees and other miscellaneous earnings if connected with loans to borrowers within this state;

(4) Interest charged to customers within this state or to accounts maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts;

(5) Interest, lease payments, or other receipts from financing leases, installment sales contracts, leases or other financing instruments received from customers within this state; and

(6) Any other gross income resulting from the operation as a financial organization within this state.

A “financial organization” means any finance company or investment company doing business in Iowa. A finance company includes any consumer finance company, sales finance company, or commercial finance company making loans to individuals and businesses. An investment company includes a company primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities.

**54.6(4)** Net business income of construction contractors shall be attributed to Iowa in the proportion which Iowa gross receipts bear to total gross receipts. Iowa gross receipts are those gross receipts from contracts performed in Iowa.

**54.6(5)** A corporation’s distributive share of net income or loss from a joint venture, limited liability company, or partnership is subject to apportionment within and without the state. If the income of the partnership, limited liability company, or joint venture is received in connection with the taxpayer’s regular trade or business operations, the partnership, limited liability company, or joint venture income shall be apportioned within and without Iowa on the basis of the taxpayer’s business activity ratio. The corporation’s distributive share of the gross receipts of the partnership, limited liability company, or joint venture shall be included in the computation of the business activity ratio in accordance with the provisions of this chapter.

EXAMPLE 1: A, a corporation with a commercial domicile in State X, is engaged in business within and without Iowa whereby A sells tangible personal property. A also has an interest in a limited partnership whose business is conducted within and without Iowa. Five percent of the limited partnership’s gross receipts are derived from the sale of tangible personal property to Iowa purchasers and 95 percent are derived from sales and deliveries to purchasers outside of Iowa. A will include 5 percent of its distributive share of the gross receipts of the partnership in the numerator along with A’s destination Iowa sales in calculating its business activity ratio. A will include 100 percent of its distributive share of the gross receipts in the denominator along with A’s total sales in calculating its business activity ratio.

EXAMPLE 2: B, a corporation with a commercial domicile in State X, has no physical presence in the state of Iowa. B’s only contact with Iowa is B’s interest in a limited partnership whose business is conducted within and without Iowa. Ten percent of the limited partnership’s gross receipts are derived from the sale of tangible personal property to Iowa purchasers and 90 percent are derived from sales and deliveries to purchasers outside of Iowa. B will include 10 percent of its distributive share of the gross receipts of the partnership in the numerator in calculating its business activity ratio. B will include 100 percent of its distributive share of the gross receipts in the denominator along with B’s total sales in calculating its business activity ratio.

**54.6(6)** Gross receipts from rent or royalties or other fees received for the use of real property are attributable to this state if the real property is located in this state.

Gross receipts from rent, royalties, license fees, or other fees received for the use of tangible personal property are attributable to this state to the extent that the property is utilized in this state. The extent of utilization of tangible personal property in this state is determined by multiplying the rents, royalties, license fees or other fees by a fraction, the numerator of which is number of days or other measure of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days or other measure of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

An example of another measure of physical location of property is where a lessee of transportation equipment is required to report to the lessor miles traveled by state.

*a.* A lessee takes possession of a rental car in this state. Six days later after driving 1,500 miles, the rental car is returned to the lessor in this state. Absent evidence to the contrary, the rental receipts are attributable to this state.

*b.* A lessee takes possession of a rental car in this state. Six days later after driving 1,500 miles, the rental car is returned to the lessor in an adjacent state. Absent evidence to the contrary, it is assumed that 50 percent of the rental receipts are attributable to this state.

c. A lessee takes possession of a rental semi-truck in another state. The lessee is required to maintain mileage records by state for purposes of special fuel tax. The lessee provides copies of these records to the lessor. The lessor must use these records to determine the portion of the rental receipts that are attributable to this state.

This rule is intended to implement Iowa Code Supplement section 422.33(1).  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—54.7(422) Apportionment of income of transportation, communications, and certain public utilities corporations.** Net income of these corporations, other than interest, dividends, rents and royalties, which is not specifically allocated by 54.2(422) and 54.6(422) shall be apportioned as follows:

**54.7(1)** Railroads shall determine their Iowa proportion of gross receipts or gross revenue from railroad operations by the following methodology:

a. Freight revenue. Freight revenue within and without Iowa shall be determined for each individual freight movement by taking the proportion of car and locomotive miles traveled in Iowa to total car and locomotive miles traveled within and without Iowa for the individual freight movement and applying such individual percentage to the gross receipts derived from the individual freight movement. Empty mileage that does not produce gross receipts shall not be used.

b. Passenger revenue. Passenger revenue within and without Iowa shall be determined by use of the same principles applicable to freight revenue.

c. Switching revenue. Unless the switching revenue is accounted for in the freight revenue or passenger revenue categories, it shall be determined in accordance with subrule 54.6(1).

d. Miscellaneous revenue. Nonexclusive examples of miscellaneous revenues include demurrage revenue, station services revenue, storage revenue, railway property rental, joint facility revenue, and amounts received from government authorities. These revenues shall be attributed to the state in which they were earned.

e. All of the above classes of revenues shall be aggregated and combined with other gross receipts or gross revenues from sources within Iowa to compose the numerator. The denominator shall be computed in accordance with 701—subrule 54.2(2).

**54.7(2)** Airline, truck and bus line companies, water transportation companies, freight car and equipment companies shall determine their Iowa proportion of gross receipts or gross revenues derived from transportation operations by taking the proportion of mileage traveled in Iowa to the total mileage traveled within and without the state.

**54.7(3)** Oil, gasoline, gas and other pipeline companies shall determine the proportion of transportation revenue derived from interstate business that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The “traffic unit” of an oil pipeline is defined as the transportation of one barrel of oil for a distance of one mile; the “traffic unit” of a gasoline pipeline is defined to be the transportation of one barrel of gasoline for a distance of one mile; and a “traffic unit” of a gas pipeline is defined to be the transportation of 1,000 cubic feet or one dekatherm of natural or casinghead gas for a distance of one mile. The taxpayer may use either 1,000 cubic feet or one dekatherm as a “traffic unit” as long as the numerator and denominator are computed on the same basis. Any other pipeline company will use the definition of the “traffic unit” which would most nearly describe the substance transported.

**54.7(4)** Telecommunications companies shall determine the Iowa proportion of gross receipts or gross revenues from telecommunication operations by the following methodology:

a. Gross receipts or gross revenues from local service in this state are attributable to this state.

b. Gross receipts or gross revenues from toll services originating and terminating in this state are attributable to this state.

c. Gross receipts or gross revenues from interstate toll services originating in this state and charged to an Iowa service address are attributable to this state.

d. Gross receipts or gross revenues from interstate toll services terminating in this state and charged to an Iowa service address are attributable to this state.

e. Gross receipts or gross revenues from the sale of phone cards in this state are attributable to this state.

*f.* Gross receipts or gross revenues from the sale of telecommunication services to resellers of telecommunication services for telecommunication services used for local service in this state are attributable to this state.

*g.* Gross receipts or gross revenues from the sale of telecommunication services to resellers of telecommunication services for telecommunication services used for toll services originating and terminating in this state are attributable to this state.

*h.* Gross receipts or gross revenues from the sale of telecommunication services to resellers of telecommunication services for telecommunication services used for interstate toll services originating in this state are attributable to this state.

*i.* Gross receipts or gross revenues from Internet access originating in this state and charged to an Iowa service address are attributable to this state.

*j.* Gross receipts or gross revenues from cellular phone services originating in this state and charged to an Iowa service address are attributable to this state.

*k.* Gross receipts or gross revenues from personal communication services originating in this state and charged to an Iowa service address are attributable to this state.

*l.* Gross receipts or gross revenues from paging services originating in this state and charged to an Iowa service address are attributable to this state.

*m.* Services originating in this state and charged to an Iowa service address are attributable to this state.

*n.* Gross receipts from cable television, satellite television, and community antenna television services, including gross receipts from providing Internet access, charged to an Iowa service address are attributable to this state.

*o.* Any other gross receipts or gross revenues from fees, access charges, toll services or other charges for communication services charged to an Iowa service address are attributable to this state. See *Goldberg v. Sweet*, 488 U.S. 252, 102 L.Ed. 2d 607, 109 S.Ct. 582 (1989).

*p.* All of the above classes of revenues shall be aggregated and combined with other gross receipts or gross revenues from sources within Iowa to compose the numerator. The denominator shall be computed in accordance with 701—subrule 54.2(2).

*q.* “Telecommunications” is an electronic mode of transmitting data, information, and audio and video signals and includes but is not limited to both one-way and two-way signals using land-line phones, cellular phones, paging devices, satellites, and microwave systems. Telecommunications is a medium or mode of delivery, not the actual content of the information transmitted over the medium. Telecommunications does not include broadcast radio and television. See subrule 54.7(5).

*r.* The term “telecommunication companies” includes but is not limited to: telephone companies; resellers of telephone services; cellular phone companies; personal communication service providers; paging service providers; radio communication providers; Internet access providers; cable television, satellite television, community antenna television companies; and other companies of a similar type.

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer’s case, results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

**54.7(5)** Radio and television companies doing business within and without Iowa shall determine their Iowa proportion of gross receipts or gross revenues derived from broadcasting operations by taking the proportion of the Iowa population served by broadcasting to the total population served by broadcasting. The population served by broadcasting shall be determined by a recognized market survey such as Arbitron. As used in this rule the term “population served by broadcasting” includes all of the residents of the broadcasting area, whether or not these residents individually elect to receive the broadcasts.

EXAMPLE: A television company has its studio and transmitter in state A. The activities of the employees and corporate officers of the television company in Iowa include solicitation of advertising, covering special news events and covering athletic events. The broadcast signal also reaches state B but the television company does not conduct any activities in state B. The population served by

broadcasting is as follows: 100,000 in Iowa, 100,000 in state A, and 50,000 in state B for a total population served by broadcasting of 250,000. The television company's apportionment factor would be computed as follows: The numerator would be the Iowa population served by broadcasting and the denominator would be the total population served by broadcasting ( $100,000 \div 250,000 = 40\%$ ).

Subrule 54.7(5) is effective for tax years beginning on or after January 1, 1988.

**54.7(6)** Corporations in the business of publishing, selling, licensing, or distributing newspapers, magazines, periodicals, trade journals, or other printed material, or which publish, sell, license or distribute in a filmed or microfilmed image, or in an electronic media, an electronic virtual storage system or broadcasts any of the above items which have been traditionally disseminated in a printed format shall determine the Iowa portion of gross receipts by the following methodology:

*a.* Gross receipts from the sale of tangible personal property including printed materials, electronic storage media, fees for use of an electronic virtual storage system or fees to receive a broadcast delivered, shipped or broadcast to a purchaser or a subscriber in this state.

*b.* Gross receipts from advertising shall be attributed to Iowa as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each individual publication of the taxpayer containing advertising and shall be equal to the ratio that the taxpayer's Iowa circulation to purchasers and subscribers of its printed material, electronic storage media, electronic virtual storage system or broadcasts containing advertising bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as the Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in a form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

*c.* When specific items of advertisement can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area of which this state is a part, the taxpayer may petition, or the director may require, that all or a portion of such receipts be attributed to this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by "b" above.

Such attribution shall be based on the ratio that the taxpayer's circulation to purchasers and subscribers located in this state bears to its total circulation to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only on the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

**54.7(7)** Utility companies shall determine their Iowa gross receipts or gross revenues from transporting natural or casinghead gas for others that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" is defined to be the transportation of 1,000 cubic feet or one dekatherm of natural or casinghead gas for a distance of one mile. Where the transportation is less than one mile, the taxpayer must accumulate the fractions of one mile into one-mile increments for purposes of computing "traffic units." The taxpayer may use either 1,000 cubic feet or one dekatherm as a "traffic unit" as long as the numerator and denominator are computed on the same basis.

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

**54.7(8)** Utility companies shall determine their Iowa gross receipts or gross revenues from transporting electricity for others that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" is defined to be the transportation of 1,000 kilowatt-hours of electricity for a distance of one mile. Where the transportation is less than one mile, the taxpayer must accumulate the fractions of one mile into one-mile increments for purposes of computing "traffic units."

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer

may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

This rule is intended to implement Iowa Code section 422.33.

**701—54.8(422) Apportionment of income derived from more than one business activity carried on within a single corporate structure.** Net income from corporations where more than one business activity is conducted within a single unitary corporate structure shall be apportioned by combining gross receipts or gross revenues of each business activity in the business activity ratio. Where necessary, formulas authorized by the department's rules or statute shall be used to ascertain the gross receipts from such business activities.

EXAMPLE: The taxpayer is engaged in the business of both manufacture of tangible personal property and trucking. During the tax year, the taxpayer received \$1,000,000 in gross receipts, \$400,000 of which was from its manufacturing operations and \$600,000 of which was from its trucking operations. In its trucking operations, the taxpayer traveled 100,000 miles in Iowa and 400,000 everywhere, and in its manufacturing operations, \$300,000 of sales were attributable to this state. The numerator of the business activity ratio would be \$450,000, which includes \$300,000 from manufacturing operations and \$150,000 ( $100,000/400,000 \times 600,000 = 150,000$ ) from trucking operations. See subrule 54.7(2). The denominator of the business activity ratio would be \$1,000,000.

This rule is intended to implement Iowa Code section 422.33.

**701—54.9(422) Allocation and apportionment of income in special cases.** If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2), or 701—Chapter 54, in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by Iowa Code subsection 422.33(2), and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing such alternative method shall be submitted to the department. The department shall require detail and proof within such time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. Such petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair*, 437 U.S. 267, 57 L.Ed.2d 197(1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair*, supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair*, supra.

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue*, 414 N.W.2d 113 (Iowa 1987).

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule “statutory method of apportionment” means the Iowa single sales factor formula set forth in Iowa Code section 422.33, subsection 2, paragraph “b,” and the apportionment methods set forth in 701—Chapter 54.

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department’s determination and the reasons therefor in accordance with rule 701—7.8(17A). The department’s determination letter shall set forth the taxpayer’s rights to protest the department’s determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department’s determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer’s continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing its return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.33.

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<sup>◇</sup> Two or more ARCs



TITLE VII  
FRANCHISECHAPTER 57  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—57.1(422) Definitions.**

**57.1(1)** When the word “*department*” appears herein, it 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 word “*tax*” is the “franchise tax on financial institutions”; and the word “*return*” is the “franchise tax return.”

The administration of the franchise tax is a responsibility of the department. The department is charged with the administration of the franchise tax, subject always to the rules, regulations and direction of the director.

**57.1(2)** The term “*financial institution*” as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a nationally chartered bank having its principal office in Iowa, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Effective June 1, 1989, the term “financial institutions” as used in division V of Iowa Code chapter 422 and in 701—Chapters 57 to 61 includes an Iowa chartered bank, a state bank chartered under the laws of any other state, a nationally chartered bank, a trust company, a federally chartered savings and loan association, a non-Iowa chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534 or a production credit association.

Unincorporated privately held financial institutions are exempt from the franchise tax filing requirements.

**57.1(3)** The term “*Internal Revenue Code*” means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

This rule is intended to implement Iowa Code section 422.61.

**701—57.2(422) Statutes of limitation.****57.2(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 limitation does not apply in the instances specified below in paragraphs “*b,*” “*c,*” “*d,*” “*e,*” “*f,*” and “*g.*”

*b.* If a taxpayer fails to include in the taxpayer’s return such 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 extension of time for filing, whichever time is the later.

*c.* If the 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 statutes of limitation 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 thereto 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, Iowa Department of Revenue, 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 franchise tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer’s income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer’s income, a copy of the revenue agent’s tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

*g.* In lieu of the above periods of limitation for any prior year for which an overpayment of tax or an elimination or reduction of any 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 limitations for the taxable year of the net operating loss or net capital loss which results in such carryback.

*h.* The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation. Nothing in this rule shall prevent the making of an assessment or refund adjustment for the purpose of taking into account the impact upon Iowa net income of federal audit adjustments.

**57.2(2)** *Waiver of statute of limitations.* Rescinded IAB 11/24/04, effective 12/29/04.

**57.2(3)** *Waiver of statute of limitations.* Waivers entered into on or after July 1, 1989. When the department and the taxpayer enter into an agreement to extend the period of limitation, interest continues to accrue on an assessed deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.

**57.2(4)** *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 sections 422.25 and 422.66.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—57.3(422) Retention of records.**

**57.3(1)** Every financial institution subject to the tax imposed by Iowa Code section 422.60 (whether or not the financial institution incurs liability for the tax) shall retain its 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 schedules required by 701—subrule 58.3(2). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**57.3(2)** In addition, records relating to computation of the Iowa apportionment factor, allocable income, other deductions or additions to federal taxable 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 limitation 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]

**701—57.4(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 a deduction. *71 Am. Jur. 2d State and Local Taxation, subsection 518 (1973).*

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—57.5(422) Jeopardy assessments.**

**57.5(1)** A jeopardy assessment may be made where a return has been filed and the director believes for any reason that collection of the tax will be jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. The department is authorized to estimate the income of the taxpayer upon the basis of available information, add penalty and interest, and demand immediate payment.

**57.5(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 sections 422.30 and 422.66.

**701—57.6(422) Information deemed confidential.** Iowa Code section 422.72 applies generally to the director, deputies, auditors, examiners, 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 Iowa Code section 422.72. See rule 701—6.3(17A).

This rule is intended to implement Iowa Code sections 422.66 and 422.72.

**701—57.7(422) Power of attorney.** For information regarding power of attorney, see rule 701—7.34(421).

**701—57.8(422) Delegation to audit and examine.** Pursuant to statutory authority the director delegates to the 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 sections 422.66 and 422.70.

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CHAPTER 59  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—59.1(422) Computation of net income for financial institutions.** “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 rules 701—59.2(422) to 701—59.13(422). The remaining provisions of this rule and rules 701—59.14(422) to 701—59.24(422) shall also be applicable in determining net income.

In the case of a financial institution 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 financial institution 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.

**701—59.2(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa franchise tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes, provided the following adjustments are made:

**59.2(1) Additions to income.**

*a.* Refunds of federal income taxes due to net operating loss, capital loss and investment credit or other credit carrybacks shall not be added for tax years beginning on or after January 1, 1980.

*b.* Iowa franchise 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.

**59.2(2) Reductions of income.** Iowa franchise tax refunds reported as income for federal income tax purposes in the loss year shall be reflected as reductions of income in the year of the loss.

**59.2(3)** If a financial institution 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 59.2(1) and 59.2(2).

*a.* After making the adjustments to federal taxable income as provided in subrules 59.2(1) and 59.2(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—59.25(422) to 701—59.29(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—59.2(422), shall be subject to a 3-year carryback and a 15-year carryover provision for tax years beginning before 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—59.2(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 franchise tax return filed with the department.

d. For tax years beginning on or after January 1, 2009, a net operating loss attributable to Iowa, as determined in rule 701—59.2(422), shall be carried forward 20 taxable years. The net operating loss cannot be carried back to a previous tax year.

**59.2(4)** No part of a net loss for a year for which the financial institution was not subject to the imposition of Iowa franchise 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.

**59.2(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.

**59.2(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 member of a consolidated income tax return for federal income tax purposes, but is required to file a separate franchise tax return, 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, and sections 422.61 and 422.63.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—59.3(422) Capital loss carryback.** Capital losses shall be allowed or allowable for Iowa franchise 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 income. For capital losses occurring in tax years beginning on or after January 1, 1980, refunds of federal corporation income taxes shall not be an adjustment in computing income subject to the franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.4(422) Net operating and capital loss carrybacks and carryovers.** If the taxpayer, for tax periods beginning before 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 net 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, and section 422.61.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—59.5(422) Interest and dividends from federal securities.** For franchise tax purposes, dividends received from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies and instrumentalities become a part of the taxable income. Examples of these types of obligations are bonds issued by the governments of Puerto Rico, Washington D.C., Guam and the Virgin Islands. Notwithstanding the above, only interest received after July 1, 1991, from bonds purchased after January 1, 1991, issued by the governments of Puerto Rico, Guam and the Virgin Islands is subject to tax.

Gains or losses from the sale or other disposition of any bonds shall be taxable for state franchise tax purposes.

Interest received on federal tax refunds is taxable for Iowa franchise tax purposes.

This rule is intended to implement Iowa Code section 422.61.

**701—59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions.** Interest and dividends from foreign securities and securities of states and their political subdivisions including Iowa shall be included in taxable income for periods beginning on or after January 1, 1980. For tax periods beginning on or after January 1, 1987, subtract interest expense allocable to interest exempt from federal income tax which was disallowed as a deduction under Internal Revenue Code Section 265(b) or 291(e)(1)(B).

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal income 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 and interest and dividend income from these obligations. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, along with interest and dividend income from these bonds, shall be included in Iowa taxable income unless the law authorizing these obligations specifically exempts the income from the sale and interest and dividend income from Iowa franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61 as amended by 2001 Iowa Acts, House File 715.

**701—59.7(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. The depreciation shall be computed in accordance with Section 168(a) of the Internal Revenue Code. Income received as a result of 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 franchise tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.8(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 59.8(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, division IX.

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.

For tax years beginning on or after January 1, 1989, a taxpayer which is considered to be a small business corporation, as defined by 701—subrule 53.11(2), is allowed a deduction for 65 percent not to exceed \$20,000 of the 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.

**59.8(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 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.

**59.8(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 interest received from loans and investments, service charges, management fees, fiduciary fees, commissions, and gross proceeds from the sale of securities held as investments 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.

**59.8(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 mental retardation, 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.

**59.8(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 targeted jobs tax credit under Section 59 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.

**59.8(5)** The taxpayer shall include a schedule with the filing of the taxpayer's 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.

**59.8(6)** 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 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.

**59.8(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 taxpayer must include a schedule with the filing of the taxpayer's 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.

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.

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 franchise 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.

This rule is intended to implement Iowa Code sections 16.1(36), 422.35 and 422.61.

**701—59.9(422) Work opportunity tax credit.** Where a financial institution claims the federal work opportunity tax credit as provided in Section 51 of the Internal Revenue Code, the amount of credit allowable shall be a deduction from Iowa taxable income to the extent the credit increased federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.10(422) Work incentive program credit.** Rescinded IAB 3/15/95, effective 4/19/95.

**701—59.11(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 franchise tax which is different from the basis used for purposes of federal income tax, an appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa income subject to franchise tax.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.12(422) Federal income tax deduction.** For tax years beginning on or after January 1, 1980, a deduction for 50 percent of federal income taxes paid or accrued is not allowed. Cash-basis taxpayers are not allowed a deduction for 50 percent of federal income taxes paid during a tax year beginning on or after January 1, 1980, which represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal income tax refund received during a tax year beginning on or after January 1, 1980, shall not be reported as income. For tax years beginning on or after January 1, 1990, because the federal environmental tax is deducted in computing federal taxable income and Iowa Code section 422.61(3) "a" does not allow the deduction of federal income taxes, the federal environmental tax must be added to federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

**701—59.13(422) Iowa franchise taxes.** Iowa franchise 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 not for purposes of determining Iowa net income. To the extent taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa franchise tax purposes. Refunds of Iowa franchise tax to the extent that the returns are included in the determination of federal taxable income shall all be subtracted from federal taxable income.

This rule is intended to implement Iowa Code section 422.61.

**701—59.14(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 franchise 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 sections 422.35 and 422.61.

**701—59.15(422) Consolidated returns.** There is no provision in the Iowa franchise tax law to allow financial institutions to file consolidated Iowa franchise tax returns with another financial institution or another corporation as defined in Iowa Code section 422.32. In the absence of any statutory authority for allowing consolidated Iowa franchise tax returns, separate Iowa franchise tax returns must be filed.

This rule is intended to implement Iowa Code sections 421.14 and 422.68(1).

**701—59.16(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 sections 422.35 and 422.61.

**701—59.17(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—59.18(422) Depreciation of speculative shell buildings.**

**59.18(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 of 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 federal taxable income in order to deduct depreciation under this rule.

**59.18(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.

**59.18(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 sections 422.35 and 422.63.

**701—59.19(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 franchise 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.

**701—59.20(422) Disallowance of expenses to carry an investment subsidiary for tax years which begin on or after January 1, 1995.** A financial institution which has an investment in an investment subsidiary on or after July 1, 1995, must allocate a portion of its total expenses used in computing its federal taxable income on a separate return basis to its investment subsidiary. The expenses which are allocable to the investment in an investment subsidiary are computed by multiplying the financial institution's total expenses used in computing its federal taxable income on a separate return basis by the ratio of the average adjusted basis in its investment subsidiary to the average adjusted basis for all assets of the financial institution. For tax years beginning on or after January 1, 1995, and before December 31, 1995, a financial institution which has an investment in an investment subsidiary on July 1, 1995, must allocate a portion of its total expenses for the entire tax year to its investment in an investment subsidiary even though it did not have an investment in an investment subsidiary for the entire tax year.

A calculation of the average for the tax year of the adjusted bases of a financial institution's investment in investment subsidiaries, and total assets, held each day of the tax year is the most accurate method for determining under Iowa Code subsection 422.61(3) the portion of a financial institution's total expenses that is allocable to the financial institution's investment in investment subsidiaries. However, the department will generally allow the average adjusted bases of an investment in investment subsidiaries for the tax year to be calculated using the average of the adjusted bases of the investment in investment subsidiaries held by the financial institution at the end of each month within the tax year. The department generally will allow the average bases of all assets of the financial institution for the tax year to be calculated using the average bases of all assets held by the financial institution at the end of each quarter of the tax year. A financial institution may compute for any tax year, without prior permission of the director, the average adjusted bases of investment in investment subsidiaries or total assets on a more frequent basis than set forth above. However, a financial institution may not compute these averages for any tax year on a less frequent basis than quarterly without obtaining prior approval of the director. This permission will be granted only in extraordinary circumstances. In addition, a

financial institution may not compute these averages for any tax year on a less frequent basis than it used for the preceding tax year unless the financial institution obtains prior approval of the director. A financial institution that has elected to use an estimate of the adjusted tax bases of its total assets for each of the first three quarters of the taxable year under Internal Revenue Service's Revenue Ruling 90-44 for federal income tax purposes may use this estimate for Iowa franchise purposes.

**59.20(1)** For the purposes of this rule, the term "affiliate" means a corporation, trust, estate, association, or similar organization:

*a.* Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions; or

*b.* Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for election of directors of such financial institution at the preceding election, or by trustees for the benefit of the shareholders of such financial institution; or

*c.* Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any financial institution; or

*d.* Which owns or controls, directly or indirectly, either a majority of the voting shares of a financial institution or more than 50 percent of the number of shares voted for the election of directors of a financial institution at the preceding election, or controls in any manner the election of a majority of the directors of a financial institution, or for the benefit of those shareholders or members all or substantially all of the outstanding voting shares of a financial institution is held by trustees; or

*e.* Which is a bank holding company, as defined by the laws of the United States, of which a financial institution is a subsidiary, and any other subsidiary as defined by the laws of the United States, of a bank holding company.

**59.20(2)** For the purposes of this rule, the term "average adjusted basis" means the financial institution's average adjusted basis as computed pursuant to Section 1016 of the Internal Revenue Code on a separate company basis.

**59.20(3)** For purposes of this rule, the term "investment subsidiary" means an affiliate that is owned, capitalized or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

This rule is intended to implement Iowa Code section 422.61 as amended by 1995 Iowa Acts, chapter 193.

**701—59.21(422) S corporation and limited liability company financial institutions.** For tax years beginning on or after January 1, 1997, a financial institution as defined in Section 581 of the Internal Revenue Code which has in effect an election under Subchapter S of the Internal Revenue Code must compute an amount of income as if the financial institution were subject to federal corporation income tax. For tax years beginning on or after July 1, 2004, a financial institution organized as a limited liability company under Iowa Code chapter 524 that is taxed as a partnership for federal income tax purposes must compute an amount of income as if the financial institution were subject to federal corporation income tax. The income is to be computed in the same manner as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable tax would compute its federal taxable income.

This rule is intended to implement Iowa Code section 422.61 as amended by 2004 Iowa Acts, House File 2484.

**701—59.22(422) Deduction for contributions made to the endowment fund of the Iowa educational savings plan trust.** To the extent that the contribution was not deductible for federal income tax

purposes, any gift, grant, or donation to the endowment fund of the Iowa educational savings plan trust may be deducted for Iowa franchise tax purposes. The contribution must be made on or after July 1, 1998, but before April 15, 2004. Effective April 15, 2004, the deduction for contributions made to the endowment fund is repealed.

This rule is intended to implement Iowa Code sections 422.35 as amended by 1998 Iowa Acts, House File 2119, and 422.61.

**701—59.23(422) Additional first-year depreciation allowance.**

**59.23(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 franchise 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.

**59.23(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 franchise tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa franchise 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.

**59.23(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 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa franchise 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.

**59.23(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 franchise 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.

**59.23(5) *Assets acquired after December 31, 2009, but before January 1, 2013.*** For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa franchise 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, 2013, 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, 2013, 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 422.35 as amended by 2011 Iowa Acts, Senate File 512, and section 422.61.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—59.24(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27,

Section 202, may be taken for Iowa franchise tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa franchise tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa franchise tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa franchise tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa franchise tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa franchise tax.

**59.24(1)** If the taxpayer elects to take the increased Section 179 expensing and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of increased Section 179 expensing, 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 increased Section 179 expensing, or taxpayer may reflect the change for increased Section 179 expensing 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 40.65(1) for examples illustrating how this subrule is applied.

**59.24(2)** If the taxpayer elects not to take the increased Section 179 expensing, the expensing allowance is limited to \$25,000 for Iowa tax purposes. The difference between the federal Section 179 expensing allowance on such property, if in excess of \$25,000, and the Iowa expensing allowance of \$25,000 can be depreciated using the modified accelerated cost recovery system (MACRS) applicable under Section 168 of the Internal Revenue Code without regard to the bonus depreciation provision in Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable Section 179 and related 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 the Section 179 expensing allowance and related depreciation, along with the gain or loss on the sale of qualifying assets for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006, can be calculated on Form IA 4562A.

See 701—subrule 53.23(2) for examples illustrating how this subrule is applied.

**59.24(3)** Special filing provision for 2010 change. Taxpayers who did not claim the increased Section 179 expensing on their tax return for the period beginning on or after January 1, 2010, but before January 1, 2011, as originally filed have two options to reflect this adjustment. Taxpayer may either file an amended return for the applicable tax year to reflect this adjustment, or taxpayer may reflect this adjustment on the next tax return. If the taxpayer elects to reflect this adjustment on the next tax return, the limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code is suspended related to the claiming of the adjustment for the next tax year.

EXAMPLE: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for the period ending December 31, 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for the period ending December 31, 2010. Taxpayer elects not to file an amended return for the period ending December 31, 2010, but to make the adjustment on the Iowa return for the period ending December 31, 2011. Taxpayer reported a loss on the federal return for the period ending December 31, 2011; therefore, no Section 179 expense can be claimed on the federal return for the period ending December 31, 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 the period ending December 31, 2011, since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 512, and section 422.61.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

#### ALLOCATION AND APPORTIONMENT

**701—59.25(422) Basis of franchise tax.** Iowa Code section 422.60 imposes a franchise tax on financial institutions (as defined in 701—subrule 57.1(2)) for the privilege of doing business within the state. The tax is measured by net income. For financial institutions subject to the tax, the tax is levied and collected only on income which may accrue or be recognized to the financial institutions from business done or carried on in the state plus net income from certain sources without the state which by rule follows the commercial domicile of the financial institution.

If a financial institution carries on business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The financial institution will be presumed to be carrying on its business entirely within the state of Iowa if its activities are carried on only within Iowa, even though it receives income from sources outside the state in the form of interest, dividends, royalties, and other sources of income from intangibles.

**59.25(1) Definition—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 financial institution organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a financial institution is doing business, it is immaterial whether its activities actually result in a profit or loss.

**59.25(2) Definition—carrying on business partly within and partly without the state.** “Carrying on business partly within and partly without the state” means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a financial institution is carrying on business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of past or future years have no bearing on the current year.

The following nonexclusive activities if done on a regular and continuing basis by financial institution officers or employees in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

- a. Solicitation of loans by traveling loan officers.
- b. Collection of overdue accounts.
- c. Any other activities carried on in advancement, promotion, or fulfillment of the business of the financial institution.

This rule is intended to implement Iowa Code sections 422.60 and 422.63.

#### **701—59.26(422) Allocation and apportionment.**

**59.26(1)** The classification of income by the labels customarily given, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents and royalties shall be apportioned as business income to the extent the income was earned as a part of a financial institution’s unitary business, a portion of which is conducted in Iowa. *Mobil Oil Corp. v. Commissioner of Taxes*, 455 U.S. 425 (1980); *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 73 L.Ed.2d 787, 102 S.Ct. 3103 (1982); *F. W. Woolworth Co. v. Taxation and Revenue Dept.*, 458 U.S. 354, 73 L.Ed.2d 819, 102 S.Ct. 3128 (1982); *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 77 L.Ed.2d 545, 103 S.Ct. 2933 (1983). Whether income is part of a financial institution’s unitary business income depends upon the facts and circumstances in

the particular situation. The burden of proof is upon the taxpayer to show that the treatment of income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of financial institutions in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

**59.26(2)** Application of related expense to nonbusiness income. Subrule 59.26(1) deals with the separation of “net” income, therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related.

A directly related expense shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows:

- a. The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property;
- b. The proceeds of the borrowing were actually applied to the specified purpose;
- c. The creditor can look only to the specific property (or any lease or other interest therein) as security for the loan;
- d. It may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and
- e. There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in “c” and “d” above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of the facts and circumstances are not present in substance. Any expense directly attributable to allocable interest, dividends, rents and royalties shall be deducted from income to arrive at net allocable income.

EXAMPLE: For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services, and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

Interest expense	\$1,200,000
Property taxes	500,000
Depreciation	500,000
Electricity	300,000
Heat	200,000
Insurance	150,000
Janitorial services	100,000
Repairs	50,000
Total expenses	<u>\$3,000,000</u>

The directly related expense of the allocable rental income is \$3,000,000.

This rule is intended to implement Iowa Code section 422.63.

**701—59.27(422) Net gains and losses from the sale of assets.** For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

**59.27(1)** Gain or loss from the sale, exchange, or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned by the business activity ratio applicable to the year the gain or loss is reported on the federal income tax return and may at the taxpayer's election be included in the computation of the business activity ratio as follows:

*a.* Gain from the sale, exchange, or other disposition of real property shall be included in the numerator if the property is located in this state.

*b.* Gain from the sale, exchange, or other disposition of tangible personal property shall be included in the numerator if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

*c.* Gains from the sale, exchange, or other disposition of intangible personal property shall be included in the numerator if the taxpayer's commercial domicile is in this state.

*d.* All gains shall be included in the denominator of the activity ratio.

A taxpayer cannot elect to exclude or include gains or loss from the sale of assets where the election would result in an understatement of income reasonably attributable to Iowa. Noninclusive examples of gains or loss from the sale, exchange or other disposition of real or tangible or intangible property which may not be included in the computation of the business activity ratio because to do so would result in an understatement of net income reasonably attributable to Iowa are the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code or gain recognized under Section 631(a) of the Internal Revenue Code.

**59.27(2)** Gain or loss from the sale, exchange, or other disposition of property not used in the taxpayer's trade or business shall be allocated as follows:

*a.* Gains or losses from the sale, exchange, or other disposition of real property located in this state are allocable to this state.

*b.* Gains or losses from the sale, exchange, or other disposition of tangible personal property are allocable to this state if:

(1) The property has a situs in this state at the time of sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

*c.* Gains or losses from the sale, exchange, or other disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

This rule is intended to implement Iowa Code section 422.63.

**701—59.28(422) Apportionment factor.** In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

**59.28(1)** Receipts derived from transactions and activities in the regular course of trade or business which produce business income are included in the denominator of the apportionment factor. Income which is not subject to the Iowa franchise tax shall not be included in the computation of the apportionment factor.

**59.28(2)** The numerator of the apportionment factor is that portion of the total receipts included in the denominator of the taxpayer attributable to this state during the income year determined as follows:

*a.* Receipts from the lease, rental, or other use of real property shall be included in the numerator if the real property is located in Iowa.

*b.* Receipts from the sale of tangible personal property shall be included in the numerator if the property is delivered or shipped to a purchaser in this state regardless of the f.o.b. point or other conditions of the sales.

*c.* Receipts from the use of tangible personal property shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of

which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

*d.* All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity formula if the situs of the tangible personal property or real property is within Iowa.

*e.* Interest and other receipts from assets in the nature of loans (including federal funds sold and banker's acceptances) and installment obligations shall be attributed to the state where the borrower is located.

*f.* Interest income from a participating bank's portion of participation loan shall be attributed to the state where the borrower is located.

*g.* Interest income from loans solicited by traveling loan officers shall be attributed to the state where the borrower is located.

*h.* Interest or service charges from bank, travel, and entertainment credit card receivables and credit card holders' fees shall be attributed to the state in which the credit card holder resides in the case of an individual or, if a corporation, to the state of the corporation's commercial domicile.

*i.* Merchant discount income derived from bank and financial corporation credit card holder transactions with a merchant shall be attributed to the state in which the merchant is located. It shall be presumed that the location of the merchant is the address on the invoice submitted by the merchant to the taxpayer.

*j.* Receipts for the performance of fiduciary services are attributable to the state where the services are principally performed.

*k.* Receipts from investments of a bank in securities, the income from which constitutes business income, shall be attributed to its commercial domicile except that:

(1) Receipts from securities used to maintain reserves against deposits to meet federal and state reserve deposit requirements shall be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere.

(2) Receipts from securities owned by a bank but held by a state treasurer or other public official or pledged to secure public or trust funds deposited in the bank shall be attributed to the banking office at which the secured deposit is maintained.

*l.* Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

*m.* Fees, commissions, or other compensation for financial services rendered for a customer located in this state or an account maintained within this state.

*n.* Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

*o.* Receipts from management services if the recipient of the management services is located in this state.

This rule is intended to implement Iowa Code section 422.63.

**701—59.29(422) Allocation and apportionment of income in special cases.** If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules

detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair*, 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair*, supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair*, supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue*, 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, "statutory method of apportionment" means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the compliance division if the request is the result of an audit or by the taxpayer services and policy division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.8(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer's return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

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Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

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◊ Two or more ARCs



TITLE VIII  
MOTOR FUEL  
CHAPTER 67  
ADMINISTRATION  
[Prior to 1/1/96, see 701—Ch 63]

**701—67.1(452A) Definitions.** For purposes of this chapter, 701—Chapter 68, and 701—Chapter 69, the following definitions shall govern:

“*Appropriate state agency*” or “*state agency*” means the department of revenue or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in Iowa Code chapter 452A.

“*Aviation gasoline*” means any gasoline capable of being used for propelling aircraft which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage for purposes of propelling aircraft. It does not include motor fuel capable of being used for propelling motor vehicles.

“*Biodiesel*” means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, which meets the standards provided in Iowa Code section 214A.2.

“*Biodiesel blended fuel*” means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component, provided in Iowa Code section 214A.2.

“*Biofuel*” means ethanol or biodiesel.

“*Blender*” means a person who owns and blends ethanol with gasoline to produce ethanol blended gasoline and blends the product at a nonterminal location. The person is not restricted to blending ethanol with gasoline. Products blended with gasoline other than ethanol are taxed as gasoline. “*Blender*” also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel.

“*Carrier*” means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

“*Common carrier*” or “*contract carrier*” means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

“*Commercial motor vehicle*” means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. “*Commercial motor vehicle*” does not include a motor truck with a combined gross weight of less than 26,000 pounds, operated as a part of an identifiable one-way fleet and which is leased for less than 30 days to a lessee for the purpose of moving property which is not owned by the lessor.

“*Dealer*” means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

“*Denatured ethanol*” means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American Society of Testing Materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning.

“*Department*” means the department of revenue.

“*Director*” means the director of the Iowa department of revenue or the director’s authorized representative.

“*Distributor*” means a person who acquires tax-paid motor fuel, special fuel, or alcohol from a supplier, restrictive supplier, or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

“*E-85 gasoline*” means ethanol blended gasoline formulated with a minimum percentage of between 70 and 85 percent by volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2.

*“Eligible purchaser”* means a distributor of motor fuel or special fuel who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

*“End user”* of special fuel means a person who has purchased a minimum of 240,000 gallons of special fuel each year in the two preceding years who elects to make delayed payments to a licensed supplier and must use electronic funds transfer.

*“Ethanol”* means ethyl alcohol that is to be blended with gasoline if the ethanol meets the standards provided in Iowa Code section 214A.2.

*“Ethanol blended gasoline”* means a formulation of gasoline which is a liquid petroleum product blended with ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. When “motor fuel” is used in these rules, it includes ethanol blended gasoline.

*“Export”* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

*“Exporter”* means a person or other entity who acquires fuel in this state for export to another state.

*“Foreign supplier”* means a person licensed as a supplier to collect and report the tax, but who does not have jurisdictional connections with this state.

*“Fuel(s)”* means and includes both motor fuel and special fuel as defined in Iowa Code chapter 452A.

*“Fuel taxes”* means the per gallon excise taxes imposed under division I of Iowa Code chapter 452A with respect to motor fuel and undyed special fuel.

*“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.

*“Import”* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

*“Importer”* means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

*“Invoiced gallons”* means gross gallons as shown on the bill of lading or manifest.

*“Iowa urban transit system”* means a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. “Iowa urban transit system” also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus.

Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services, and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

*“Licensee”* means a person holding an uncanceled supplier’s, restrictive supplier’s, importer’s, exporter’s, or blender’s license issued by the department or any other person who possesses fuel for which the tax has not been paid.

*“Mobile machinery and equipment”* means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including, but not limited to, corn shellers, truck-mounted feed grinders, roller mills, ditch-digging apparatus, power shovels, draglines, earth-moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, and earth-moving scrapers. However, “mobile machinery and equipment” does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

*“Motor fuel”* means a substance or combination of substances which is intended to be or is capable of being used for the purpose of operating an internal combustion engine, including but not limited to a motor vehicle, and is kept for sale or sold for that purpose and includes the following:

1. All products commonly or commercially known or sold as gasoline (including ethanol blended gasoline, casinghead, and absorption or natural gasoline) regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

2. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials designation D-86), shows not less than 10 percent distilled (recovered) below 347° F (175° C) and not less than 95 percent distilled (recovered) below 464° F (240° C).

*“Motor fuel”* does not include special fuel and does not include liquefied gases which would not exist as liquids at a temperature of 60° F and a pressure of 14 7/10 pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph “2,” in which event the resulting product shall be deemed to be motor fuel. “Motor fuel” also does not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.

*“Motor vehicle”* means and includes all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment, or produce shall not be deemed to be a motor vehicle. “Motor vehicle” shall not include “mobile machinery and equipment.”

*“Naphthas and solvents”* means and includes those liquids which come within the distillation specifications for motor fuel, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

*“Non-ethanol blended gasoline”* means gasoline other than ethanol blended gasoline.

*“Nonterminal storage facility”* means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. “Nonterminal storage facility” includes a facility that manufactures products such as ethanol, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

*“Person”* means and includes natural persons, partnerships, firms, associations, corporations, representatives appointed by any court, and political subdivisions of this state or any other group or combination acting as a unit and the plural as well as the singular number applies.

*“Public highways”* means and includes any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

*“Racing fuel”* means leaded gasoline of 110 octane or more that does not meet American Society of Testing Materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

*“Regional transit system”* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared-ride basis shall not be construed to be a regional transit system.

*“Restrictive supplier”* means a person not otherwise licensed as an importer who imports motor fuel or undyed special fuel into this state in amounts of less than 4,000 gallons in tank wagons or in small tanks.

*“Special fuel”* means fuel oils, kerosene and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any

substance used for that purpose, except that it does not include motor fuel. Kerosene and methanol shall not be considered to be special fuels, unless the kerosene or methanol is blended with other special fuels for use in a motor vehicle with a diesel engine.

*“Supplier”* means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. “Supplier” includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. “Supplier” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

*“Taxpayer”* means anyone responsible for paying fuel taxes directly to the department of revenue under Iowa Code chapter 452A.

*“Terminal”* means a motor fuel, alcohol, or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. “Terminal” does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

*“Terminal operator”* means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If coventurers own a terminal, “terminal operator” means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

*“Withdrawn from terminal”* means physical movement from a supplier to a distributor or eligible end user or from an alcohol manufacturer to a nonterminal location and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal. Exchange of product by suppliers while in the distribution channel and the physical movement of alcohol from an alcohol manufacturer to an Iowa licensed supplier’s alcohol storage at a terminal are not to be considered “withdrawn from terminal.”

This rule is intended to implement Iowa Code sections 452A.2 and 452A.59 as amended by 2008 Iowa Acts, Senate File 2400.

**701—67.2(452A) Statute of limitations, supplemental assessments and refund adjustments.** After a return is filed, the department must examine it, determine fuel taxes due, and give notice of assessment to the taxpayer. If no return is filed, the department may determine the tax due and give notice thereof. See rule 701—67.5(452A). The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If the assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and

must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

This rule is intended to implement Iowa Code section 452A.67 as amended by 1999 Iowa Acts, Senate File 136.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—67.3(452A) Taxpayers required to keep records.** The records required to be kept by this rule must be preserved for a period of three years and will be open for examination by the department during this period of time. The department, after an audit and examination of the records, may authorize the disposal of the records required to be kept upon written request by the taxpayer. For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4).

**67.3(1) Motor fuel and special fuel supplier.** Every supplier required to file a monthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

- a. Copies of bills of lading or manifests.
- b. Copies of sales invoices.
- c. Sales records.
- d. Copies of filed returns and supporting schedules.
- e. Record of payment.
- f. Export schedules.

**67.3(2) Restrictive supplier.** Every restrictive supplier required to file a monthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

- a. Copies of bills of lading or manifests.
- b. Purchase invoices.
- c. Copies of sales invoices.
- d. Purchase records.
- e. Sales records.
- f. Copies of filed returns and supporting schedules.
- g. Record of payment.

**67.3(3) Importer.** Every importer required to file a semimonthly return under Iowa Code section 452A.8 is required to keep and preserve the following records relating to the purchase or sale of fuel:

- a. Copies of bills of lading or manifests.
- b. Purchase invoices.
- c. Copies of sales invoices.
- d. Purchase records.
- e. Sales records.
- f. Copies of filed returns and supporting schedules.
- g. Record of payment.

**67.3(4) Exporter.** Every exporter is required to keep and preserve the following records relating to the purchase of fuel for export:

- a. Copies of bills of lading or manifests.
- b. Purchase invoices and purchase records.
- c. Copies of reports, returns, and supporting schedules filed with the importing state.
- d. Record of payment.

**67.3(5) Compressed natural gas and liquefied petroleum gas dealers and users.** Every compressed natural gas and liquefied petroleum gas dealer and user is required to keep and preserve the following records:

- a. Copies of purchase invoice or bills of lading.
- b. Copies of sales invoices and sales records.
- c. Record of payment.
- d. Exemption certificates.

e. Copies of filed returns and supporting schedules.

**67.3(6) Terminal or nonterminal storage facility operator.** Every person required to report under Iowa Code section 452A.15(2) or 2002 Iowa Acts, House File 2622, section 25, as an operator of a terminal or nonterminal storage facility shall keep and preserve the following records:

- a. Records to evidence the acquisition of fuel.
- b. Bills of lading or manifests covering the withdrawal of fuel.
- c. Copies of filed reports and supporting schedules.

**67.3(7) Distributor.** Every distributor handling motor fuel or special fuel is required to preserve and keep the following records:

- a. Delivery tickets.
- b. Sales invoices.
- c. Bills of lading.
- d. Record of payment.

**67.3(8) Blender.** Every blender is required to keep and preserve the following records:

- a. Purchase invoices for motor fuel, special fuel, and alcohol.
- b. Bills of lading.
- c. Copies of filed returns and supporting schedules.
- d. Record of payment.
- e. Copies of sales invoices.

**67.3(9) Dealer.** Every dealer (retailer) is required to keep and preserve the following records:

- a. Purchase invoices.
- b. Purchase records.
- c. Delivery tickets.
- d. Sales invoices.
- e. Sales records.
- f. Record of payment.

**67.3(10) Microfilm and related record systems.** Microfilm, microfiche, COM (computer on machine), and other related reduction in storage systems will be referred to as “microfilm” in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, and ledgers, are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 3.02. However, microfilm reproductions of supporting records of detail, such as sales invoices and purchase invoices, may be allowed providing there is no administrative rule or Iowa Code section requiring the original and all of the following conditions are met and accepted by the taxpayer:

- a. Appropriate facilities are provided to ensure the preservation and readability of the films.
- b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.
- c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.
- d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.
- e. Any audit of “detail” on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director’s designated representative.
- f. A posting reference must be on each invoice.
- g. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

**67.3(11) Automatic data processing records.** Automatic data processing (ADP) is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer’s tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director's designated representative upon request. The system should be designed so that the supporting documents, such as sales invoices and purchase invoices, are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source, such as invoice or payment, to a financial statement or tax return or report; or the reverse, that is, to have an auditable system.)

e. Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

- (1) The application being performed;
- (2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and
- (3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

f. Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

**67.3(12) *Electronic data interchange or EDI technology.*** The purpose of this subrule is to adopt the "Model Recordkeeping and Retention Regulation" report as promulgated by the Federation of Tax Administrators' Steering Committee Task Force on EDI Audit and Legal Issues for Tax Administration (March 1996). This subrule defines the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Iowa Code sections 452A.10, 452A.12, 452A.55, 452A.60, 452A.62, 452A.69, 452A.76, and 452A.80. It is also the purpose of this subrule to address these requirements where all or part of a taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems. A taxpayer must maintain all records that are necessary for determination of the correct tax liability as set forth in this subrule and the other subrules within rule 701—67.3(452A). Upon request, all required records must be made available to the department or its authorized representatives as provided in Iowa Code sections 452A.10 and 452A.62. If a taxpayer retains records required to be retained under this subrule in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. Nothing in this subrule will be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this subrule. However, as previously stated, this will not relieve a taxpayer of the obligation to comply with the requirement to make records available to the department.

a. *Definitions.* The following definitions are applicable to this subrule:

"*Database management system*" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"*Electronic data interchange*" or "*EDI technology*" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

"*Hard copy*" means any documents, records, reports, or other data printed on paper.

"*Machine-sensible record*" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

“*Storage-only imaging system*” means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

“*Taxpayer*” as used in this subrule means any person, business, corporation, fiduciary, or other entity that is required to file a return or report with the department of revenue.

*b. Record-keeping requirements — machine-sensible records.* A taxpayer that maintains and retains books, records, and other sources of information in the form of machine-sensible records must comply with the following:

(1) General requirements. A taxpayer must comply with the following general requirements regarding the retention of machine-sensible records:

1. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. The term “standard record format” does not mean that every taxpayer must keep records in an identical manner. Instead, it requires that if a taxpayer utilizes a code system to identify elements of information in each record when creating and maintaining records, the taxpayer is required to maintain a record of the meaning of each code and any code changes so that the department may effectively review the taxpayer’s records.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer that does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct a traditional paper document for tax purposes.

(2) Electronic data interchange requirements. A taxpayer must comply with the following requirements for records received through electronic data interchange:

1. Where a taxpayer uses an electronic data interchange process and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, for motor fuel tax purposes the retained records should contain the following minimal information: bills of lading or manifests; invoices; sales and purchase records; returns, reports, and supporting schedules; records of payments; export schedules; exemption certificates; and delivery tickets. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy the requirements set forth in the preceding paragraph at any level within the accounting system and need not retain the original EDI transaction records provided that the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains the other records such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its original EDI transaction for tax purposes.

(3) Electronic data processing accounting systems requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. In addition, pursuant to Iowa Code sections 452A.10, 452A.12, 452A.55, 452A.60, 452A.62, 452A.69, 452A.76, and 452A.80, the department must have access to the taxpayer’s EDI processing, accounting, or other systems for the purposes of verifying or evaluating the integrity and reliability of those systems to provide accurate and complete records.

(4) Business process information. To verify the accuracy of the records being retained, the taxpayer must comply with the following:

1. Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. The description must include the relationship between the records and the tax documents prepared by the taxpayer and include the measures employed to ensure the integrity of the records.

2. The taxpayer must be capable of demonstrating the following:

- The functions being performed as they relate to the flow of data through the system;
- The internal controls used to ensure accurate and reliable processing; and
- The internal controls used to prevent unauthorized addition to, alteration of, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- Record formats or layouts;
- Field definitions (including a record of any changes in the system or codes and the meaning of all codes used to represent information);
- File descriptions (e.g., data set name); and
- Detailed charts of accounts and account descriptions.

*c. Record maintenance requirements.* The department recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records. (The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, Edition.) The taxpayer's computer hardware and software must accommodate the extraction and conversion of retained machine-sensible records.

*d. Access to machine-sensible records.* If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon the request of the department.

(1) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that must take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Access shall be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on magnetic medium that is agreed to by the department.

4. The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

*e. Taxpayer's responsibility and discretionary authority.* In conjunction with meeting the requirements of paragraph "b" of this subrule, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with this subrule for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of paragraph "b" of this subrule. The taxpayer shall document the process that created the separate file to show the relationship between that file and the original records. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract will not relieve the taxpayer of its responsibilities under this rule.

*f. Alternative storage media.* For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche, or other storage-only imaging systems and may discard the

original hard-copy documents provided that the rules governing alternative storage media are met. For details regarding alternative storage, see subrule 67.3(9), “Microfilm and related record systems.”

*g. Effect on hard-copy record-keeping requirements.* Except as otherwise provided, the provisions of this subrule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on alternative storage media as indicated in paragraph “f” above and subrule 67.3(9).

If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), hard-copy records need not be created.

Hard-copy records generated at the time of the transaction with the use of a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

Nothing in this rule shall prevent the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**67.3(13) General requirements.** If a tax liability has been assessed and an appeal is pending to the department, state board of tax review, or district or supreme court, books, papers, records, memoranda, or documents specified in this rule which relate to the period covered by the assessment must be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 701—67.5(452A), estimate gallonage, applies.

This rule is intended to implement Iowa Code sections 452A.6 and 452A.15 as amended by 2002 Iowa Acts, House File 2622, and sections 452A.8, 452A.9, 452A.10, 452A.17, 452A.59, 452A.60, 452A.62, and 452A.69.

**701—67.4(452A) Audit—costs.** The department has the right and duty to examine or cause to be examined the books, records, memoranda, or documents of a taxpayer for the purpose of verifying the correctness of a return filed or determining the tax liability of any taxpayer. The costs incurred in examining the records of a taxpayer are at the taxpayer’s expense when the records are kept at an out-of-state location. Cost will include meals, lodging, and travel expenses, but will not include salaries of department personnel. (See 1976 O.A.G. 611.)

This rule is intended to implement Iowa Code section 452A.10 and 452A.62 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.55 and 452A.69.

**701—67.5(452A) Estimate gallonage.** It is the duty of the department to collect all taxes on fuel due the state of Iowa. In the event the taxpayer’s records are lacking or inadequate to support any return filed by the taxpayer, or to determine the taxpayer’s liability, the department has the power to estimate the gallonage upon which tax is due. This estimation will be based upon such factors as, but not limited to, the following: (1) prior experience of the taxpayer, (2) taxpayers in similar situations, (3) industry averages, (4) records of suppliers or customers, and (5) other pertinent information the department may possess, obtain or examine.

This rule is intended to implement Iowa Code section 452A.64.

**701—67.6(452A) Timely filing of returns, reports, remittances, applications, or requests.** The returns, reports, remittances, applications, or requests required under Iowa Code chapter 452A shall be deemed filed within the required time if (1) postpaid, (2) properly addressed, and (3) postmarked on or before midnight of the day on which due and payable. Any return that is not signed and any return which does not contain substantially all of the pertinent information are not considered “filed” until such time as the taxpayer signs or supplies the information to the department. *Miller Oil Company v. Abrahamson*, 252 Iowa 1058, 109 N.W.2d 610 (1961), *Severs v. Abrahamson*, 255 Iowa 979, 124 N.W.2d 150 (1963). The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts, unless remittance is required to be transmitted

electronically; and if either condition is not met, a penalty will be assessed. Remittances transmitted electronically are considered to have been made on the date the remittance is added to the bank account designated by the treasurer of the state of Iowa. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The director may require by rule that reports and returns be filed by electronic transmission. Effective for returns due after July 1, 2006, all licensees must file returns by electronic transmission. All suppliers, restricted suppliers, importers, terminals, blenders, and nonterminal storage facilities with at least 5,000 gallons of product on their return or report must also file the schedules which support the return or report by electronic transmission.

All returns, reports, remittances, applications, or requests should be mailed to: Iowa Department of Revenue, Motor Fuel Unit, Hoover State Office Building, Des Moines, Iowa 50319, unless electronic transmission is required.

In the event a dispute arises as to the time of filing, or a return, report, or remittance is not received by the department, the provisions of Iowa Code section 622.105 are controlling. This rule applies only when the document is not received or the postmark on the envelope is illegible, erroneous, or omitted.

This rule is intended to implement Iowa Code sections 452A.8 and 452A.61.

**701—67.7(452A) Extension of time to file.** The department may grant an extension for the filing of any required return or tax payment or both.

In order for an extension to be granted, the application requesting the extension must be filed, in writing, with the department prior to the due date of the return or remittance. In determining whether an application for extension is timely filed, the provisions of rule 701—67.6(452A) shall apply. The application for extension must be accompanied by an explanation of the circumstances justifying such extension, and in no event will the extension period exceed 30 days.

In the event an extension is granted, the penalties under Iowa Code section 452A.65 applicable to late-filed returns or remittances will not accrue until the expiration of the extension period, but the interest on tax due under the same section will accrue as of the original filing date.

This rule is intended to implement Iowa Code section 452A.61.

**701—67.8(452A) Penalty and interest.** See rules 701—10.6(421) and 701—10.2(421) for failure to timely file a return or for failure to timely pay the tax. See rule 701—10.8(421) for penalty exceptions. See rule 701—10.72(452A) for interest on refunds.

**701—67.9(452A) Penalty and enforcement provisions.** See rule 701—10.71(421).

**701—67.10(452A) Application of remittance.** All payments are to be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due. If a taxpayer remits a payment on or before the due date, but the payment is insufficient to discharge the tax liability, the entire amount of the payment applies to the tax, and the penalty and interest are based on the unpaid portion of the tax. If the department determines there is additional tax due from a taxpayer, interest and penalty shall accrue on that amount from the date it should have been reported and paid.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155, and Iowa Code sections 452A.65 and 452A.66.

**701—67.11(452A) Reports, returns, records—variations.** The department will prescribe and furnish forms upon which reports, returns, and applications are to be made to the department under Iowa Code chapter 452A. Claims for refund will be made on forms provided by the department or in any other manner as prescribed by the director. Licensees may substitute forms for their use, other than official forms, if all the requirements in department rule 701—8.3(17A) are met.

If the information required in these documents is presented to the department on forms or in a manner other than the prescribed form, or approved substitute form, the return, application, or claim for refund or credit shall not be deemed “filed.” The forms may be furnished by the department (except those pertaining to division III interstate operations which are available from the department of transportation)

and, therefore, the fact that the reporting party does not have the prescribed form is not an excuse for failure to file.

The department may also prescribe the form of the records which the reporting parties are required to keep in support of the reports/returns they file. The department may approve the form of the records which are being kept by any reporting party and must approve the form of record being kept if that form contains all of the information on the prescribed form, the information is compiled in such a manner as to make it easily ascertainable by department personnel, and substantially complies with the prescribed form.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.12(452A) Form of invoice.** Whenever an invoice is required to be kept or prepared by Iowa Code chapter 452A, the invoice must:

1. Be prepared by someone other than the purchaser and include the seller's name, address, and identification number.
2. Include the purchaser's name and address.
3. Contain a serial number of three or more digits.
4. Include the calendar date of purchase.
5. Indicate the type of fuel purchased. Diesel fuel must be designated as dyed or undyed.
6. Indicate the quantity of fuel purchased in gross gallons.
7. Indicate the total purchase price and show separately the amount of state and federal fuel tax included in the purchase price or include a statement that all state and applicable federal taxes are included in the purchase price.
8. For ethanol blended gasoline or biodiesel blended fuel, state its designation as provided in Iowa Code section 214A.2.
9. Be prepared on paper which will prevent erasure or alteration or on another form approved by the department.

This rule is intended to implement Iowa Code section 452A.10, section 452A.12 as amended by 2009 Iowa Acts, Senate File 478, section 140, and section 452A.60.  
[ARC 8225B, IAB 10/7/09, effective 11/11/09]

**701—67.13(452A) Credit card invoices.** Credit card invoices are acceptable if they meet substantially all the requirements of rule 701—67.12(452A). (1968 O.A.G. 592)

For refund purposes, presentation of a credit card invoice or billing statement is prima facie evidence that the fuel tax has been paid.

This rule is intended to implement Iowa Code section 452A.60 as amended by 1995 Iowa Acts, chapter 155.

**701—67.14(452A) Original invoice retained by purchaser—certified copy if lost.** Whenever an invoice is required to be kept under Iowa Code chapter 452A, it must be the original copy which is kept. If the original copy is either lost or destroyed, a copy, certified by the seller as being a true copy of the original, will be acceptable. A copy of any invoice which is required to be kept by the purchaser must be kept by the seller for the same period of time.

This rule is intended to implement Iowa Code sections 452A.10 and 452A.60 as amended by 1995 Iowa Acts, chapter 155.

**701—67.15(452A) Taxes erroneously or illegally collected.** Licensees, including licensed suppliers, restrictive suppliers, importers, and blenders, are entitled to a return of taxes, penalty, and interest erroneously or illegally collected by the department. The request for the return of the taxes must be (1) in writing, (2) filed with the department within one year of the time the tax was paid if paid prior to July 1, 2002, and within three years of the time the tax was paid if the tax was paid on or after July 1, 2002, (3) filed by the licensee who remitted the tax to the department, and (4) accompanied by documentation supporting the claim for refund. If the erroneous collection was the result of a computational error

on the part of the taxpayer and that error is discovered by the department during an examination of the taxpayer's records within three years of the overpayment, the taxes will be refunded and a written request will not be necessary. If the request includes the return of erroneously or illegally collected (assessed) penalty or interest, the interest or penalty shall be refunded in the same proportion as the tax. A refund requested under Iowa Code section 452A.72 will be reduced by sales tax if applicable. There is no minimum refund amount for refunds claimed under the provisions of Iowa Code section 452A.72. See sales tax rule 701—18.37(422,423).

**67.15(1)** Motor fuel and undyed special fuel suppliers must inform the department upon which bill(s) of lading, by number, and upon which monthly return(s) the tax was erroneously paid. The gallonage upon which a refund is requested on motor fuel or undyed special fuel must be reduced by the distribution allowance provided in Iowa Code section 452A.5. An amended return must be filed for the tax period in which the error occurred.

**67.15(2)** Restrictive suppliers, importers, and blenders must inform the department upon which bill(s) of lading or invoice, by number, and upon which monthly or semimonthly return(s) the tax was erroneously paid and an explanation of the erroneous payment. An amended return must be filed for the tax period in which the error occurred.

This rule is intended to implement Iowa Code section 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

**701—67.16(452A) Credentials and receipts.** Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges are to be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee of the department, the taxpayer should require the employee to issue an official receipt. Such receipt must show the taxpayer's name, address, and permit or license number; the purpose of the payment; and the amount of the payment. The taxpayer should retain all receipts, and the only receipts which the department will accept as evidence of a cash payment are the official receipts.

This rule is intended to implement Iowa Code section 452A.59 as amended by 1995 Iowa Acts, chapter 155.

**701—67.17(452A) Information confidential.** Iowa Code section 452A.63, which makes all information obtained from reports, returns, or records required to be filed or kept under Iowa Code chapter 452A confidential, applies generally to the director, deputies, auditors, agents, officers, or other employees of the department. The information may be divulged to the appropriate public officials enumerated in Iowa Code section 452A.63. These public officials include (1) member(s) of the Iowa General Assembly, (2) committees of either house of the Iowa legislature, (3) state officers, (4) persons who have responsibility for the enforcement of Iowa Code chapter 452A, (5) officials of the federal government entrusted with enforcement of federal motor vehicle fuel tax laws, and (6) officials of other states who have responsibility to enforce motor vehicle fuel tax laws and who will furnish like information to the department. An exception to this rule is that the appropriate state agency may make available to the public the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state by suppliers, restrictive suppliers, and importers. The public request must be made within 45 days following the last day of the month in which the tax is required to be paid. See rule 701—6.3(17A) for procedures for requesting information.

This rule is intended to implement Iowa Code section 452A.63 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.18(452A) Delegation to audit and examine.** Pursuant to statutory authority, the director of revenue delegates to the coadministrators of the compliance division the power to examine reports, returns, and records, make audits, and determine the correct amount of tax, interest, penalties, and fines due, and to take all actions authorized to collect the same, subject to review by or appeal to the director

of revenue. The power so delegated may further be delegated by the coadministrators of the division to auditors, clerks, examiners, and employees of the division.

This rule is intended to implement Iowa Code sections 452A.62 and 452A.76.

**701—67.19(452A) Practice and procedure before the department of revenue.** The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

**701—67.20(452A) Time for filing protest.** Any person wishing to contest an assessment, denial of all or any portion of a refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, must file a protest with the clerk of the hearings section for the department pursuant to rule 701—7.8(17A) within 60 days of the issuance of the assessment, denial, or other department action contested. If a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payments pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing claims.

This rule is intended to implement Iowa Code section 452A.64.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—67.21(452A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections 422.52(3) and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

**67.21(1) When required.**

*a.* Classes of business. When the director determines, based on departmental records, other state or federal agency statistics, or current economic conditions, that certain segments of the petroleum business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security will be required from every licensee operating a business within this class unless it is shown to the director's satisfaction that a particular licensee within a designated class is solvent and that the licensee previously timely remitted the tax. If the director selects certain classes of licensees for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

*b.* New applications for fuel tax permits. Notwithstanding the provisions of paragraph “a” above, the director has determined that importers will be required to post a bond in the amount of \$25,000 and other applicants for a new fuel tax permit 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 likely not be able to timely remit the tax, or (2) the new applicant held a prior fuel tax license and the remittance record of the tax under the prior license falls within one of the conditions in paragraph “c” below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior license, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in “c” or such person had a previous fuel tax permit revoked. The applicant is “substantially similar” to the extent that said applicant is owned or controlled by persons who owned or controlled the previous licensee. For example, X, a corporation, had a previous fuel tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a fuel tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

*c.* Existing licensees—amount of bond or security. The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—67.24(452A). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the license holder can satisfy one of the conditions set forth in Iowa Code section 421.27, penalty waiver.

(1) Suppliers will be requested to post a bond or security when they have had one or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover six months' fuel tax liability or \$5,000, whichever is greater.

(2) Restrictive suppliers will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$2,000, whichever is greater.

(3) Blenders will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past six months.

The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$2,000, whichever is greater.

(4) L.P.G. and C.N.G. dealers and users will be requested to post a bond or security when they have had two or more delinquencies in remitting the fuel tax or timely filing monthly returns during the past 12 months. The bond or security will be an amount sufficient to cover 12 months' fuel tax liability or \$500, whichever is greater.

*d.* Eligible purchasers and end users will be required to post a bond or security when they have failed to pay the tax to a supplier. They will not be allowed to register as an eligible purchaser or end user again until the bond or security requirement has been complied with.

The bond or security will be an amount sufficient to cover six months' fuel tax based on previous purchases.

*e.* Waiver of bond. If a licensee has been requested to post a bond or security or if an applicant for a license has been requested to post a bond or security, upon the filing of the bond or security if the licensee maintains a good filing record for a period of two years, the licensee may request that the department waive the continued bond or security requirement. Importer bonds will not be waived.

**67.21(2) *Type of security or bond.*** When it is determined that a licensee or applicant for a fuel tax permit is required to post collateral to secure the collection of the fuel tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities, or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, cashier's check, money order, or certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An assignment from the bank must accompany the original certificate of deposit filed with the department for the bank to be released from liability. When a licensee elects to post cash rather than a certificate of deposit as a bond, conversion to a certificate of deposit will not be allowed. When the licensee is a corporation, an officer of the corporation may assume personal responsibility for the payment of fuel tax. Security requirements for the officer will be evaluated as provided in 67.21(1) above as if the officer applied for a fuel tax license as an individual.

This rule is intended to implement Iowa Code sections 422.52(3) and 452A.66.

**701—67.22(452A) Tax refund offset.** The department may apply any fuel tax refund against any other liability outstanding.

This rule is intended to implement Iowa Code sections 452A.17 and 421.17.

**701—67.23(452A) Supplier, restrictive supplier, importer, exporter, blender, dealer, or user licenses.**

**67.23(1) *Requirements for license.*** In order to become licensed as a fuel supplier, restrictive supplier, importer, exporter, blender, dealer, or user, the person must file a written application with the department. The license is valid until revoked or canceled, and is nonassignable. The application is to include, but not be limited to, the following information:

*a.* The name under which the licensee will transact business in the state.

*b.* The location of the principal place of business of the licensee and the mailing address if different.

- c. The social security number or federal identification number of the licensee.
- d. The type of ownership.
- e. The name and complete residency address of the owner(s) of the business or, if a corporation or association, the names and addresses of the principal officers.
- f. The type of license being requested.
- g. Exporters only — the state and license number for that state in which the fuel is being exported.
- h. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

**67.23(2) *Assignment of a license.*** The following are nonexclusive situations that are considered assignments, and the acquiring person must apply for a new license.

- a. A sale of the taxpayer's business, even if the new owner operates under the same name.
- b. A change of the name under which the licensee conducts business.
- c. A merger or other business combination which results in a new or different entity.

**67.23(3) *Denial of a license.*** The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax and will deny a permit of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. See rule 701—13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. If the application for a license is denied, see rule 701—7.23(17A) for rights to appeal.

**67.23(4) *Revocation of a license.*** The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax and will revoke a license of an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual. If a licensee is a corporation, the department may revoke the license if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. The department may also revoke the license of any licensee who abuses the privileges for which the license was issued, who files a false return, or who fails to file a return (including supporting schedules), pay the full amount of tax due, produce records requested, or extend cooperation to the department. See rule 701—7.55(17A) for rights to appeal.

**67.23(5) *Efficient administration of motor fuel laws.*** When in the opinion of the director it is necessary for the efficient administration of Iowa Code chapter 452A, the director may regard persons or facilities in possession of motor fuel, special fuel, biofuel, alcohol, or alcohol derivative substances as blenders, dealers, eligible purchasers, exporters, importers, restrictive suppliers, suppliers, terminal operators, or nonterminal storage facility operators. The department will notify the person or facility of the various requirements under the motor fuel tax laws and will ensure that a license is issued.

This rule is intended to implement Iowa Code sections 452A.4 and 452A.6.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—67.24(452A) *Reinstatement of license canceled for cause.*** A license canceled for cause will be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 452A.68 to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel

tax license the initial time, the licensee will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file returns, and to post a bond and have refrained from activities requiring a license under sections 452A.4 and 452A.6 during the waiting period as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the licensee must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 452A.74 for a period not to exceed 90 days as a condition for the restoration of a license or the issuance of a new license after cancellation for cause. The department may require a statement that the licensee has fulfilled all requirements of said order canceling the license for cause and the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a report or return timely.

Failure to pay tax timely (including unhonored payments, failure to pay and late payments).

Failure to file a return and pay tax as shown on the return (counts as one offense).

The hearing officer or director of revenue may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six or seven offenses.

Ten days for eight or nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within 24 months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within 18 months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within 12 months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within 36 months of the second cancellation for cause. See 701—subrule 7.24(1) for rights to appeal.

This rule is intended to implement Iowa Code section 452A.68 as amended by 1999 Iowa Acts, Senate File 136.

**701—67.25(452A) Fuel used in implements of husbandry.** Dyed special fuel is exempt from tax. Motor fuel or undyed special fuel is subject to refund when used in implements of husbandry as defined in Iowa Code section 321.1(32). A vehicle as defined in Iowa Code section 321.1(90) is not an implement of husbandry. The department of revenue, the state department of transportation, the department of public safety, and any other peace officer as requested by such department is empowered to enforce the use of special fuel or motor fuel in any illegal manner, including the inspection and testing of fuel in the fuel supply tank of an implement of husbandry.

This rule is intended to implement Iowa Code section 452A.76 as amended by 1995 Iowa Acts, chapter 155.

**701—67.26(452A) Excess tax collected.** If a licensee collects tax on exempt fuel or collects more tax than is due, the licensee must return the excess tax paid to the purchaser if the tax has not been paid to the department. If the tax has been paid to the department, the department will return the excess tax paid to the consumer upon appropriate documentation.

This rule is intended to implement 1999 Iowa Acts, Senate File 136, section 66.

**701—67.27(452A) Retailer gallons report.** The department is required to compile information reported to it by retail dealers regarding the number of gallons of the various fuel classifications sold by retail dealers in the previous calendar year and submit a report to the governor and the legislative services agency by April 1 of each year. Each retail dealer is required to file a report with the department detailing the number of motor fuel gallons sold during the previous calendar year on both a companywide basis and a site-by-site basis as required by the department. The retail dealer report is due by January 31 following the close of the calendar year.

The report filed by the department will include information in the aggregate relating to total sales of gasoline, ethanol blended gasoline, diesel fuel and biofuels. The report will also include appropriate percentage sales of various fuel products. The report will not include individual retail dealer information, trade secret information or confidential information.

This rule is intended to implement Iowa Code section 452A.33 as amended by 2011 Iowa Acts, Senate File 531.

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CHAPTER 68  
MOTOR FUEL AND UNDYED SPECIAL FUEL  
[Prior to 1/1/96, see 701—Ch 64]

**701—68.1(452A) Definitions.** See 701—67.1(452A).

**701—68.2(452A) Tax rates—time tax attaches—responsible party.**

**68.2(1)** The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢ per gallon (for July 1, 2004, through June 30, 2005)
	20.7¢ per gallon (for July 1, 2005, through June 30, 2006)
	21¢ per gallon (for July 1, 2006, through June 30, 2007)
	20.7¢ per gallon (for July 1, 2007, through June 30, 2008)
	21¢ per gallon (for July 1, 2008, through June 30, 2010)
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through June 30, 2010)
E-85 gasoline	17¢ per gallon beginning January 1, 2006, through June 30, 2007
	19¢ per gallon (for July 1, 2007, through June 30, 2010)
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22.5¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

**68.2(2)** Except as otherwise provided in this subrule, until June 30, 2012, this subrule shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state. Aviation gasoline shall not be used, beginning calendar year January 1, 2009, in determining the percentage basis for the tax rates effective July 1, 2010, and after. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Ethanol %</u>	<u>Ethanol Tax</u>	<u>Gasoline Tax</u>
00/50	19.0	20.0
50+/55	19.0	20.1
55+/60	19.0	20.3
60+/65	19.0	20.5
65+/70	19.0	20.7
70+/75	19.0	21.0
75+/80	19.3	20.8
80+/85	19.5	20.7
85+/90	19.7	20.4
90+/95	19.9	20.1
95+/100	20.0	20.0

Except as otherwise provided in this subrule, after June 30, 2012, an excise tax of 20 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

**68.2(3)** The tax attaches when the fuel is withdrawn from a terminal or imported into Iowa. The tax is payable to the department by the supplier, restrictive supplier, importer, blender, or any person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer or any other person who possesses taxable fuel upon which the tax has not been paid. The tax is to be remitted to the department by a supplier, restrictive supplier, or blender by the last day of the month following the month in which the fuel is withdrawn from a terminal or imported. The tax is to be remitted by an importer by the last day of the month for fuel imported in the first 15 days of the month and by the fifteenth day of the following month for fuel imported after the fifteenth day of the previous month. Nonlicensees who possess taxable fuel upon which the tax has not been paid must file returns and pay the tax the same as a restrictive supplier (monthly). All licensees must make payment by electronic funds transfer (see publication 90-201 for EFT requirements).

**68.2(4)** The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 1A. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 1A.

Beginning January 1, 2006, retailers of E-85 gasoline must file a report with the department by the last day of the month of each calendar quarter for each retail location showing the number of invoiced gallons of E-85 gasoline sold by the retailer in Iowa during the preceding calendar quarter. The report must also include a listing of the vendors providing E-85 gasoline to the retailer and the number of gallons received from each vendor. If the retailer blends E-85 gasoline, the retailer must show the number of gallons of motor fuel (including both gasoline and alcohol) purchased and blended. The report must be signed under penalty for false certificate.

**68.2(5)** Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code section 452A.3 as amended by 2009 Iowa Acts, Senate File 419, section 44, and sections 452A.8 and 452A.85.

[ARC 8225B, IAB 10/7/09, effective 11/11/09]

**701—68.3(452A) Exemption.** Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales

tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this state. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968). See sales tax rule 701—18.37(422,423).

Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17, subsection 1, paragraph “a.” However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

**701—68.4(452A) Ethanol blended gasoline taxation—nonterminal location.**

**68.4(1)** Blenders who own the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (20¢ per gallon). The blender must obtain a blender’s license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of this subrule and subrules 68.4(2) and 68.4(3), the tax rate for gasoline is presumed to be 20¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 19¢ per gallon. The actual tax rate for the appropriate period is shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ( $7,200 \times .20$ ) =	\$1,440.00
Blender adds 800 gallons untaxed alcohol	.00
Total tax paid on products	\$1,440.00
Total tax due on 8,000 gallons blended product ( $8,000 \times .19$ ) =	<u>\$1,520.00</u>
Additional Amount Due	\$ 80.00

**68.4(2)** Blenders who purchase alcohol and gasoline from a supplier must pay tax of \$.19 per gallon on the alcohol purchased and \$.20 per gallon on the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ( $7,200 \times .20$ ) =	\$1,440.00
Blender purchases 800 gallons tax-paid alcohol ( $800 \times .19$ ) =	152.00
Total Tax Paid on Products	<u>\$1,592.00</u>
Total tax due on 8,000 gallons blended product ( $8,000 \times .19$ ) =	<u>\$1,520.00</u>
Amount of Refund Allowable	\$ 72.00

**68.4(3)** Ethanol blended gasoline—blending errors. For periods beginning July 1, 1978, to June 30, 2000.

Where blending errors occur and an insufficient amount of alcohol has been blended with motor fuel so that the mixture fails to qualify as ethanol-blended gasoline as defined in Iowa Code section 452A.2(6), the tax shall be determined as follows:

*a.* If the amount of the alcohol blended with motor fuel is short by five gallons or less per blend, the alcohol and motor fuel blended is to be considered ethanol-blended gasoline and there will be no penalty or assessment of additional tax.

*b.* If the alcohol and motor fuel mixture is short of alcohol by more than five gallons but the alcohol blended with the motor fuels is short by 1.01 percent or less of such mixture, the motor fuel must be divided for tax purposes into ethanol-blended gasoline and motor fuel containing no alcohol as follows.

That portion of alcohol must be added to motor fuel on the basis of one part alcohol to nine parts motor fuel to determine the portion which is considered ethanol-blended gasoline and have a tax status as such. The portions of motor fuel remaining are to be considered taxable motor fuel subject to tax at the prevailing rate.

c. If the amount of alcohol blended with motor fuel is short by more than 1.01 percent of the total blend, the total blend of motor fuel and alcohol is subject to tax as motor fuel at the prevailing rate of tax.

The following formula will be used to compute blending errors:

Motor fuel  $\div$  9 = required alcohol

Misblended ethanol blended gasoline  $\times$  .0101 = gallons of alcohol tolerance

Required alcohol – actual alcohol is less than or equal to gallons of alcohol short

Actual alcohol  $\times$  9 = motor fuel portion of ethanol-blended gasoline

Motor fuel portion of ethanol-blended gasoline + actual alcohol = ethanol-blended gasoline

Actual motor fuel – motor fuel portion of ethanol-blended gasoline = motor fuel

The following factors are assumed for all examples:

Figures are rounded to the nearest whole gallons; ethanol-blended gasoline taxed at \$.19 per gallon; motor fuel taxed at \$.20 per gallon. Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Motor fuel	=	8,000 gal.
Alcohol	=	800 gal.
$8,000 \div 9$	=	889 gal. required alcohol
$8,800 \times .0101$	=	89 gal. alcohol tolerance
$889 - 800$	=	89 gal. short of alcohol

89 is equal to 89 which means that the tax is applied according to paragraph “b” above as follows:

$800 \times 9$	=	7,200 gal. motor fuel portion of ethanol-blended gasoline
$7,200 + 800$	=	8,000 gal. of ethanol-blended gasoline
$8,000 - 7,200$	=	800 gal. of motor fuel subject to tax
$8,000 \text{ gal. of alcohol} \times \$.19$	=	\$1520 tax on ethanol-blended gasoline
$800 \text{ gal. of motor fuel} \times \$.20$	=	\$ 160
TOTAL		\$1680 (\$1520 + \$160)

EXAMPLE 2.

Motor fuel	=	8,000 gal.
Alcohol	=	795 gal.
$8,000 \div 9$	=	889 gal. required alcohol
$8,795 \times .0101$	=	89 gal. alcohol tolerance
$889 - 795$	=	94 gal. short of alcohol

94 is greater than 89 which means that the entire blend is considered motor fuel and the tax is applied according to paragraph “c” above as follows:

$$8,795 \times \$0.20 = \$1759.00$$

## EXAMPLE 3.

Motor fuel	=	8,000 gal.
Alcohol	=	885 gal.
$8,000 \div 9$	=	889 gal. required alcohol
$889 \text{ gal.} - 885 \text{ gal.}$	=	4 gal. short of alcohol

This total blend is considered ethanol blended gasoline because the blend is short by less than 5 gallons. The tax would be as follows:

$$8,885 \text{ gal.} \times \$0.19 = \$1688.15$$

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.5(452A) Tax returns—computations.****68.5(1) Supplier—nexus.**

*a.* The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the alcohol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

*b.* If fuel is withdrawn by a supplier with no nexus in Iowa, but who voluntarily agrees to collect and report the tax, from a terminal outside of Iowa for importation into Iowa, the tax liability is computed in the same manner as in paragraph “a” with the exception that no deduction is allowable for exports.

**68.5(2)** The fuel tax liability for a restrictive supplier is to be computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the preceding calendar month.

**68.5(3)** The fuel tax liability for an importer is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel imported into Iowa during the applicable reporting period.

**68.5(4)** The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All entries on the return for determining the tax liability must be rounded to the nearest whole number.

This rule is intended to implement Iowa Code section 452A.3 as amended by 2001 Iowa Acts, House File 736, and sections 452A.5, 452A.8, and 452A.9.

**701—68.6(452A) Distribution allowance.** The tax computation for a supplier includes a distribution allowance of 1.6 percent of the motor fuel gallonage and 0.7 percent of the undyed special fuel gallonage removed from the terminal during the reporting period. The distributor purchasing the fuel

from the supplier is entitled to 1.2 percent of the motor fuel distribution allowance. The distributor or dealer purchasing fuel from a supplier is entitled to 0.35 percent of the undyed special fuel distribution allowance. The distribution allowance does not apply to fuel exported.

This rule is intended to implement Iowa Code sections 452A.5 and 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.7(452A) Supplier credit—uncollectible account.** A licensed supplier who is unable to recover the tax from an eligible purchaser or end user is not liable for the tax and may credit the amount of unpaid tax against a later remittance of tax.

**68.7(1)** To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

Notification is to be sent to the Iowa Department of Revenue, Examination Section, Compliance Division, P. O. Box 10456, Des Moines, Iowa 50306-0456.

**68.7(2)** A supplier does not qualify for the credit if the purchaser did not elect to apply for the eligible purchaser or end user status or did not qualify to be an eligible purchaser. Likewise, the credit does not apply if the supplier sells additional fuel to a delinquent eligible purchaser or end user after notifying the department that the supplier has an uncollectible debt with an eligible purchaser.

**68.7(3)** Upon notification from the supplier that an eligible purchaser is in default of the tax payment, that person's eligible purchaser or end user status will be canceled by the department. The eligible purchaser or end user status will not be reinstated until such time as the purchaser posts securities to guarantee future tax payments as provided in 701—paragraph 67.21(1)“d.”

**68.7(4)** Eligible purchaser. Any distributor of motor fuel or special fuel or end user of special fuel who requests authorization to make delayed payments of the motor vehicle fuel tax must first register with the department to obtain the eligible purchaser status.

The eligible purchaser must pay the tax to the supplier by electronic funds transfer one business day prior to the date the tax is to be paid by the supplier.

Once approved, the eligible purchaser status is valid until voluntarily canceled by the eligible purchaser or canceled by the department of revenue. See 701—subrule 67.23(4).

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.8(452A) Refunds.** Refunds are allowable for the tax paid on motor fuel and undyed special fuel in the following situations:

**68.8(1)** Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is “primarily” engaged in the performance of some “essential” government function, and (e) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed. *Unemployment Compensation Commission v. Wachovia Bank & Trust Company*, 215 N.C. 491, 2 S.E.2d 592 (1939); 1976 O.A.G. 823, 827. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax. *Wood Brothers Construction Co. v. Bagley*, 232 Iowa 902, 6 N.W.2d 397 (1942).

The refund is not available to employees of the federal government who purchase fuel individually and are later reimbursed by the federal government. The name of the federal agency must appear on the invoice as the purchaser of the fuel or the refund will not be allowed.

**68.8(2)** Transit systems. Fuel sold to an Iowa urban transit system as defined in 701—67.1(452A) or a company operating a taxicab service under contract with an Iowa urban transit system which is used

for a purpose specified in Iowa Code section 452A.57(6) and fuel sold to a regional transit system as defined in 701—67.1(452A) which is used for a purpose specified in Iowa Code section 452A.57(11).

**68.8(3)** The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

The refund is not available to agencies or instrumentalities of a political subdivision, but rather only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823)

The refund is also not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

**68.8(4)** Contract carriers. Motor fuel and undyed special fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

**68.8(5)** Fuel used in unlicensed vehicles, stationary engines, machinery and equipment used for nonhighway purposes, implements used in agricultural production, and fuel used for home heating.

**68.8(6)** Fuel used for producing denatured alcohol.

**68.8(7)** Fuel used in the watercraft of a commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to Iowa Code section 482.4.

**68.8(8)** Fuel placed in motor vehicles, whether registered or not registered, not operated on public highways, and used in the extraction and processing of natural deposits.

**68.8(9)** Idle time. Persons who wish to claim a refund for idle time (the engine is running but not propelling the vehicle) must first apply to the department and provide statistical information on how the refund amount will be calculated. Normally, to qualify for a refund the vehicle must be equipped with an on-board monitoring device which will record the actual time the engine is idling and the amount of fuel consumed while idling. If the device only records the idle time and not fuel used, the refund amount will be calculated at one-half gallon of fuel consumed per one hour of idle time. The computation must also consider the miles driven in Iowa versus total miles driven. The department will require a review of interstate carrier reports before approval of the computation method.

**68.8(10)** Power takeoff. Persons operating vehicles which have auxiliary equipment that is powered by the power takeoff may apply for a refund for that portion of the fuel used for powering the auxiliary equipment.

The person requesting the refund must furnish the department with statistical information on how the exempt percentage is established. The percentage can be established by using the following noninclusive methods.

- Determine the actual fuel usage by the hour while the auxiliary equipment is in use compared to total hours the engine is running.
- Establish total miles per gallon for the vehicle when auxiliary equipment is not in use compared to miles per gallon while the equipment is in use.
- Other computation methods to be reviewed by the department prior to approval.

It has been predetermined that tax on fuel used in the mixing of cement into concrete, the off-loading of the concrete, and the loading and off-loading of solid waste will be refunded on the basis of 30 percent of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from tax-paid bulk storage tanks or sales tickets

where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be granted where it can be substantiated through the use of separate meters which operate to measure the fuel when the vehicle is stationary or the use of separate tanks which fuel the vehicle only when the vehicle is stationary that the actual nonhighway fuel usage exceeds 30 percent.

**68.8(11)** Refrigeration units (reefers). Tax paid on motor fuel and undyed special fuel is subject to refund. The person must maintain records of fuel purchases to substantiate the tax-paid purchases. Invoices must meet the criteria set forth in rule 701—67.12(452A). In addition, the invoices must separately state fuel purchased and placed in the reefer unit. Liquefied petroleum gas may be purchased tax-free for use in reefer units. See rule 701—69.10(452A).

**68.8(12)** Pumping credits. A refund will be allowed for taxes paid on fuel once that fuel has been placed in the fuel supply tank of a motor vehicle when the motor of that vehicle is used as a power source for off-loading procedures. Meter readings from the pump used in the off-loading procedure or the invoice, manifest or bill of lading number covering the product off-loaded must be retained. The claims for refund, unless a different amount can be proven, will be (a) one-half gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using motor fuel or special fuel (diesel) to power the motor and (b) one gallon credit for each 1,000 gallons of liquid products pumped and three-tenths of a gallon credit for each ton of dry products pumped when using special fuel (LPG) to power the motor.

**68.8(13)** Transport diversions. When a transport load of motor fuel or undyed special fuel is sold tax-paid with a destination in this state and later diverted to a destination outside the state, the person who actually paid the Iowa tax is entitled to a refund. To secure a refund, the person must file a completed claim form provided by the department with supporting documentation including a copy of the bill of lading, invoices or document showing where and to whom the fuel was delivered, a copy of the reporting form and evidence of payment to the state where the fuel was actually delivered.

**68.8(14)** Casualty loss. In the event fuel is lost or destroyed through fire, explosion, lightning, flood, storm, earthquake, terrorist attack, or other casualty, the taxpayer must inform the department in writing of such loss within 10 days of the loss; and the notification must contain the amount of gallon-age lost or destroyed which must be in excess of 100 gallons. An application for refund must be submitted to the department within 60 days of the notification and contain a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction and the number of gallons. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty was a part of the last delivery into the storage just prior to the loss. No refund is allowable for fuel lost through evaporation, theft, normal leakage, or unknown causes. Leakage resulting from a major accident or catastrophe is subject to refund.

**68.8(15)** Exports by eligible purchasers (distributors). Distributors who have purchased tax-paid motor fuel or undyed special fuel and sell the fuel to consumers outside the state may apply for a refund of the Iowa tax paid. The distributor must retain records as provided in rule 701—67.3(452A) to support the request for refund.

**68.8(16)** Blending errors for special fuel. Dyed special fuel commingled with undyed special fuel and motor fuel commingled with special fuel. If dyed special fuel is inadvertently mixed with tax-paid undyed special fuel to the extent that the undyed fuel must have additional dye added to meet federal dyeing requirements to qualify as exempt dyed fuel, the tax is refundable on the undyed special fuel. The refund request must contain the number of gallons of undyed fuel lost through the mixing error and documentation as to how the gallonage was determined. If motor fuel is blended in error with dyed special fuel to produce a commingled product that must be destroyed or refined for subsequent use, the tax-paid fuel is subject to refund. The request for refund must contain documentation that the commingled product was destroyed or sold for purposes of refinement at a terminal.

**68.8(17)** Watercraft. Special fuel used in watercraft. This subrule is retroactive to July 1, 1996.

**68.8(18)** Refund of tax—Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the

tax. However, Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 452A. The fuel must be purchased by the Indian seller with the tax included in the purchase price, unless the seller's status as a particular licensee authorizes the seller to purchase fuel tax-free. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or the tribe of which the Indian purchaser is a member filing a claim for refund of the tax paid by the tribe on fuel sold to the Indian purchaser.

**68.8(19)** Racing fuel.

**68.8(20)** Benefited fire districts if the fuel is used for public purposes.

This rule is intended to implement Iowa Code section 452A.17 as amended by 2005 Iowa Acts, House File 216, and Iowa Code section 452A.71.

**701—68.9(452A) Claim for refund—payment of claim.** In order to receive a refund, the claimant must hold a refund permit.

**68.9(1)** Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and alcohol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

**68.9(2)** Refunds are made and the amount of the refund is paid to the person who actually paid the tax with the following exception: Persons requesting a refund for idle time, power takeoff, reefer units, pumping credits, or transport diversions may designate another person as an agent to file the claim and receive the refund. The person acting as an agent for others must provide the department with the following information including, but not limited to, the name, address, and federal identification number or social security number of the person on whose behalf they are requesting the refund. Once a person is designated as an agent, this designation remains in force until the department is notified in writing the agency agreement no longer exists. A governmental agency may designate another governmental agency as an agent for filing and receiving any tax refund authorized in Iowa Code section 452A.17.

**68.9(3)** Deposit of refund. If the person so designates on the application, the department will direct deposit the refund in the person's designated bank account. If this option is selected on the application, additional forms will be provided to secure the needed information for direct deposit. In lieu of direct deposit, the permit holder will receive a state warrant.

**68.9(4)** A claim for refund will not be allowed unless the claimant has accumulated \$60 in credits for one calendar year. A claim for refund may be filed anytime the \$60 minimum has been met within the calendar year. If the \$60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the \$60 minimum has been met, the claim for refund must be filed within one year if met prior to July 1, 2002, and within three years if met on or after July 1, 2002.

EXAMPLE: A claim for refund in the amount of \$200 is filed in March of 1996. During the remainder of 1996 an additional \$50 in credits is accumulated. The claimant cannot claim this \$50 credit on the claimant's 1996 income tax return because an income tax credit cannot be filed for any year in which a claim for refund was filed. The claimant must file a claim for refund of the \$50 even though it is below the \$60 minimum.

EXAMPLE: The claimant does not have a refund permit. The claimant accumulates \$40 in credits during January of 2002 and \$50 in credits during June of 2002. The claimant may claim a \$90 credit on the claimant's 2002 income tax return or apply for a refund permit and claim a refund within one year of June 2002 which is the date the \$60 minimum was met. If the \$60 minimum is met on or after July 1, 2002, the claim for refund must be filed within three years of the date the \$60 minimum was met.

**68.9(5)** A refund will not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or any undyed special fuel taken out of this state in aircraft or motor vehicles.

**68.9(6)** Rescinded IAB 11/3/99, effective 12/8/99.

This rule is intended to implement Iowa Code sections 452A.17, 452A.19, 452A.21, and 452A.72 as amended by 2002 Iowa Acts, Senate File 2305.

**701—68.10(452A) Refund permit.** To obtain the refund provided for in Iowa Code chapter 452A and rule 68.8(452A), the claimant must have an uncanceled refund permit. The application for a refund permit is provided by the department and will contain, but not be limited to, the following information: (1) the name and location of the business and the mailing address if different, (2) the type of ownership, (3) the social security number or federal identification number of the applicant, and (4) the type of refund requested. The refund permit is issued without cost and remains in effect until revoked, canceled or until the permit becomes invalid. All refund permit holders are required to keep invoices and copies of returns if filed, supporting schedules and studies for documentation to support the refund.

This rule is intended to implement Iowa Code section 452A.18 as amended by 1995 Iowa Acts, chapter 155.

**701—68.11(452A) Revocation of refund permit.** The following violations will result in the revocation of the permit: (1) using a false or altered invoice in support of a claim, (2) making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund, (3) refusal to submit the claimant's books and records for examination by the department, and (4) nonuse for a period of three years. If the permit is revoked for reason (1), (2), or (3) above, the permit will not be reissued for a period of at least one year. If the permit is revoked for reason (4) above, the permit will be reissued upon proper application. (See rule 701—7.23(17A) for revocation procedure.)

This rule is intended to implement Iowa Code section 452A.19.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—68.12(452A) Income tax credit in lieu of refund.** In lieu of applying for a refund permit, a person or corporation may claim the refund allowable under Iowa Code section 452A.17 as an income tax credit. If a person or corporation holds a refund permit and elects to receive an income tax credit, the person or corporation must cancel the refund permit within 30 days after the first day of its year or the permit becomes invalid and application must be made for a new permit. Once the election to receive an income tax credit has been made, it remains in effect until the election is changed. The income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, exports by distributors, and excess tax paid on ethanol blended gasoline.

This rule is intended to implement Iowa Code sections 422.110, 452A.17(2), and 452A.21 as amended by 1999 Iowa Acts, Senate File 136.

**701—68.13(452A) Reduction of refund—sales tax.** Under Iowa Code section 422.45(11), the gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed are exempt from Iowa sales tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 422.42(3) or 422.45 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales tax. See sales tax rule 701—18.37(422,423). The sale base upon which the sales tax will be applied shall include all federal excise taxes, but will not include the Iowa motor vehicle fuel tax. *W. M. Gurley v. Army Rhoden*, 421 U.S. 200, 44 L.Ed. 110, 95 S.Ct. 1605.

This rule is intended to implement Iowa Code section 452A.17 as amended by 1995 Iowa Acts, chapter 155.

**701—68.14(452A) Terminal withdrawals—meters.** Any refinery or terminal within this state must be fixed with meters which totalize the gross gallons withdrawn. All bills of lading or manifests must show the gross gallons withdrawn. A temperature-adjusted or other method shall not be used except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All fuel withdrawn from a refinery or terminal within this state must pass through these meters.

This rule is intended to implement Iowa Code sections 452A.2, 452A.8, 452A.15(2), and 452A.59 as amended by 1995 Iowa Acts, chapter 155.

**701—68.15(452A) Terminal and nonterminal storage facility reports and records.** Each terminal and nonterminal storage facility operating in Iowa must file a monthly inventory report with the department. The report shall include, but not be limited to, the following information:

1. The name and license number of the company that owns and operates the terminal or nonterminal storage facility.
2. The location of the terminal or nonterminal storage facility.
3. The month and year covered by the report.
4. The terminal code assigned by the Internal Revenue Service or the storage facility license number assigned by the department.
5. The beginning inventory.
6. The total receipts for the month including for each receipt: (a) the gross gallons received by schedule code, by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of receipt, (d) the seller, (e) the carrier, (f) the mode of transportation, and (g) the destination state.
7. The total withdrawals for the month, including for each withdrawal: (a) the gross gallons withdrawn by schedule code and by fuel type and, if diesel fuel, whether dyed or undyed fuel, (b) the bill of lading number, (c) the date of withdrawal, (d) the consignor, (e) the consignee, (f) the mode of transportation, (g) the destination state, (h) the origin state, and (i) the carrier.
8. The actual ending inventory and any gains or losses.
9. The signature or electronic signature of the person responsible for preparing the report.
10. Such additional information as the department may require.

For periods beginning on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission. All licensees must file reports by electronic transmission beginning September 1, 2006.

This rule is intended to implement Iowa Code section 452A.15(2).

**701—68.16(452A) Method of reporting taxable gallonage.** The exclusive method of determining gallonage of any purchase or sale of motor fuel or special fuel and distillate fuel is to be on gross-volume basis. A temperature-adjusted or other method cannot be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refineries.

This rule is intended to implement Iowa Code section 452A.8 as amended by 1995 Iowa Acts, chapter 155.

**701—68.17(452A) Transportation reports.** The reports required under Iowa Code section 452A.15(1) are to be filed by railroad carriers, common carriers, contract carriers, distributors transporting fuel for others, and anyone else transporting fuel from without the state and unloading it at other than terminal storage within the state. The report must include all fuel which was imported into Iowa and unloaded at other than terminal storage, all fuel withdrawn from Iowa terminal storage and delivered in Iowa, and all fuel withdrawn from Iowa terminal storage and exported from Iowa. These reports must be filed monthly and show as to each delivery:

1. The name, address, and federal identification number or social security number of the person to whom actually delivered.
2. The name, address, and federal identification number or social security number of the originally named consignee, if delivered to anyone other than the originally named consignee.
3. The point of origin, the point of delivery, and the date of delivery.
4. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.
5. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.
6. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.
7. The manner, if delivered by other means, in which the delivery is made.
8. Such additional information relative to shipments of motor fuel or special fuel as the department may require.

For periods on or after July 1, 2002, the director may impose a civil penalty against any person who fails to file the reports required under the motor fuel tax laws. The penalty shall be \$100 for the first violation and shall increase by \$100 for each additional violation occurring in the calendar year in which the first violation occurred.

The director may require that reports be filed by electronic transmission.

This rule is intended to implement Iowa Code section 452A.15 as amended by 2002 Iowa Acts, House File 2622 and Senate File 2305.

**701—68.18(452A) Bill of lading or manifest requirements.** Whenever a bill of lading or manifest is required to be issued, carried, retained, or submitted by these rules, it shall meet the following minimum requirements:

1. Contain the name and address of the refinery, terminal, ethanol plant, biodiesel plant or point of origin.
2. Contain the date of withdrawal or import.
3. Contain the name of the shipper-supplier-consignor.
4. Contain the name of the purchaser-consignee.
5. Contain the place of actual destination.
6. Contain the name of the transporter.
7. Contain the gross gallons by fuel type.
8. Contain the designation for ethanol blended gasoline or biodiesel blended fuel as provided in Iowa Code section 214A.2.
9. Contain a statement designating whether diesel fuel is dyed or undyed.
10. Have machine printed thereon a serial number of not less than four digits.

This rule is intended to implement Iowa Code sections 452A.10, 452A.12, 452A.60, and 452A.76.  
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TITLE IX  
PROPERTYCHAPTER 70  
REPLACEMENT TAX AND STATEWIDE PROPERTY TAXDIVISION I  
REPLACEMENT TAX

**701—70.1(437A) Who must file return.** Each taxpayer, as defined in Iowa Code Supplement section 437A.3(30), shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code sections 437A.8(1)“a” through “f” and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity subject to the replacement tax during the tax year, the return must contain a statement to that effect.

**701—70.2(437A) Time and place for filing return.** The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is \$300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Property Tax Division, Hoover State Office Building, Des Moines, Iowa 50319.

**701—70.3(437A) Form for filing.** Returns must be made by taxpayers 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. All information shall be supplied and each direction complied with in the same manner as if the forms were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making the replacement tax return.

Returns received which are not completed, but merely state “see schedule attached,” “no tax due,” or some other conclusionary statement 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’s being filed after the due date.

**701—70.4(437A) Payment of tax.** Payment of tax shall not accompany the filing of the replacement tax return with the director. Payment of tax shall never be made to the director or the state of Iowa. Payment of the proper amount of tax due shall be made to the appropriate county treasurer upon notification by the county treasurer to the taxpayer of the taxpayer’s replacement tax obligation.

**701—70.5(437A) Statute of limitations.**

**70.5(1)** The director has three years after a return is filed to determine the tax due if the return is found to be incorrect and to give notice to the taxpayer of the determination. This three-year statute of limitations does not apply in the instances specified in 70.5(2).

**70.5(2)** If a taxpayer files a false or fraudulent return with the intent to evade any tax, the correct amount of tax due may be determined by the director at any time after the return has been filed.

**70.5(3)** If a taxpayer fails to file a return, the three-year period of limitations does not begin to run until the return is filed with the director.

**70.5(4)** Waiver of statute of limitations. The department and the taxpayer may extend the three-year period of limitations provided in 70.5(1) above by signing a waiver agreement form provided by the department. The agreement shall designate the period of extension and the tax year for which the extension applies. The agreement shall provide that the taxpayer may file a claim for refund of replacement tax at any time prior to the expiration of the agreement.

#### **701—70.6(437A) Billings.**

##### **70.6(1) Notice of adjustments.**

*a.* An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that items subject to tax may not have been listed or included as taxable, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct. A copy of such notice shall also be sent to the appropriate county treasurer.

*b.* Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the person wishes to contest the matter, the person should file a timely claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if timely payment is not made). If no payment has been made, the person may discuss with the agent, auditor, clerk, or employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Department of Revenue, Property Tax Division, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the person's position may be required.

*c.* Power of agent, auditor, or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk, or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

**70.6(2) Notice of assessment.** If, after following the procedure outlined in 70.6(1) "b," no agreement is reached and the person does not pay the amount determined to be correct to the appropriate county treasurer, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer with a copy sent to the appropriate county treasurer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the appropriate county treasurer and file a refund claim with the director within the applicable period provided in Iowa Code section 437A.14(1) "b" for filing such claims.

**70.6(3) Supplemental assessments and refund adjustments.** The director may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the director shall notify the appropriate county treasurer. Such resolution shall preclude the director and the taxpayer from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax year unless there is a showing of mathematical or clerical error or showing of fraud or misrepresentation.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—70.7(437A) Refunds.**

**70.7(1)** A claim for refund of replacement tax may be made on a form obtainable from the department. All claims for refund should be filed with the director, and not with the county treasurer. In the case of a refund claim filed by an agent or representative of the taxpayer, a power of attorney must accompany the claim. All claims for refund must be in writing.

**70.7(2)** A taxpayer shall not offset a refund or overpayment of tax for one tax year as a prior payment of tax of a subsequent tax year on the tax return of a subsequent year unless the provisions of Iowa Code section 437A.8(7) are applicable.

**70.7(3)** Refunds—statute of limitations. The statute of limitations with respect to which refunds or credits may be claimed are:

*a.* The later of three years after the due date of the tax payment upon which the refund or credit is claimed; or one year after which such payment was actually made.

*b.* Ninety days after the due date of the tax payment upon which refund or credit is claimed if the tax is alleged to be unconstitutional.

**70.7(4)** No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid to the appropriate county treasurer under written protest which specifies the particulars of the alleged unconstitutionality.

**70.7(5)** The taxpayer responsible for paying the tax, or the taxpayer's successors, are the only persons eligible to file claims for refund or credit of the tax with the director and are the only persons eligible to receive such refunds or credits.

**70.7(6)** The director will promptly notify the appropriate county treasurer of the acceptance or denial of any refund claim or credit. The county treasurer shall pay the refund claim or portion thereof accepted by the director.

**70.7(7)** A taxpayer has 60 days from the date of the notice of denial of a refund or credit, in whole or in part, to file a protest according to the provisions of rule 701—7.8(17A).

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—70.8(437A) Abatement of tax.** The provisions of rule 701—7.31(421) are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the director, the appropriate county treasurer shall be notified. The director's decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—70.9(437A) Taxpayers required to keep records.**

**70.9(1)** Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

*a.* Records associated with the number of taxable kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year. Such records shall also include those for calendar year 1998.

*b.* Records associated with the number of taxable kilowatt-hours of electricity consumed within each electric competitive service area during the tax year where the delivery of such electricity is not subject to the replacement delivery tax.

*c.* Records associated with the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

*d.* Records associated with the number of taxable kilowatt-hours of electricity generated within the state of Iowa during the tax year. Such records shall also include those for calendar year 1998.

*e.* Records associated with taxable pole miles of transmission lines owned or leased by the taxpayer for each of the line voltage tiers subject to tax imposed in Iowa Code section 437A.7. Such records shall also include those for calendar year 1998.

*f.* Records associated with the excess property tax liability of each generation and transmission electric cooperative assigned to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such records shall include those for calendar year 1998. "Excess property tax liability" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under Iowa Code sections 437A.6 and 437A.7 for calendar year 1998.

*g.* Records associated with the number of taxable therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year. Such records shall also include those for calendar year 1998.

*h.* Records associated with the number of taxable therms of natural gas consumed within each natural gas competitive service area during the tax year where the delivery of such natural gas is not subject to the replacement delivery tax.

*i.* Records associated with the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997. For municipal utilities, such records shall be for the 1997 assessment year and shall also include records associated with items in 1999 Iowa Acts, Senate File 473, section 30.

*j.* Records associated with the taxpayer's calculation of the tentative replacement taxes due for the tax year and required to be shown on the tax return.

*k.* Records associated with increases or decreases in the tentative replacement tax required to be shown to be due where the electric and natural gas delivery tax rates are subject to recalculation under the provisions of Iowa Code section 437A.8(7).

*l.* Records associated with the kilowatt-hours of electricity and the therms of natural gas entitled to be exempted from the taxes imposed by Iowa Code sections 437A.4 to 437A.7 by the enumerated exemptions therein.

*m.* Records associated with kilowatt-hours of electricity and therms of natural gas delivered in a manner set forth in Iowa Code sections 437A.4(7) and 437A.5(6).

*n.* All work papers associated with any of the records described in this rule.

*o.* Records pertaining to any additions or deletions of property described as exempt from local property tax in Iowa Code section 437A.16.

*p.* Records associated with allocation of property described in paragraph "o" above among local taxing districts.

**70.9(2)** The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the replacement taxes are reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

**701—70.10(437A) Credentials.** Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

**701—70.11(437A) Audit of records.** The director or the director's authorized representative shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a tax return filed, of information presented,

or for estimating the tax liability of a taxpayer. When a taxpayer fails or refuses to produce the records for examination upon request, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the director deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to the replacement tax.

**701—70.12(437A) Collections/reimbursements.** Neither the director nor the department is empowered to receive any payment of replacement tax. Therefore, taxpayers should never pay any replacement tax to the director or the state of Iowa. All payments of replacement tax are to be made to the appropriate county treasurer.

**70.12(1)** A person in possession of a renewable energy tax credit certificate issued pursuant to Iowa Code chapter 476C or a wind energy tax credit issued pursuant to chapter 476B as amended by 2008 Iowa Acts, Senate File 2405, may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in renewable energy tax credit certificates or wind energy tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under Iowa Code section 437A.8 the renewable energy tax credit certificates or the wind energy tax credit certificates and provide any other information the director may require. The director shall direct that a warrant be issued to the person for an amount equal to the tax imposed and paid by the person. Any credit in excess of the person's tax liability may be claimed as a refund for the following seven years. Pursuant to Iowa Code section 437A.14, a taxpayer may file a claim for refund with the director within three years after the replacement tax became due. If the renewable energy or wind energy tax credit claim exceeds the replacement tax due in a year, the taxpayer has seven years to carry over the excess credit. Pursuant to Iowa Code section 476C.4(6), a person may not receive both a renewable energy tax credit and a wind energy tax credit. The reimbursement applies to a qualified facility placed in service on or after July 1, 2005, but before July 1, 2012. The utilities board shall notify the department of revenue of the amount of kilowatt hours of electricity purchased from a renewable energy facility or the amount of kilowatt hours generated and purchased from a qualified wind energy facility or generated and used on site by the qualified wind energy facility. The department of revenue shall calculate the amount of the tax credit and issue the tax credit certificate. Wind energy and renewable energy tax credit certificates may be transferred, and a replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

**70.12(2)** A person in possession of a soy-based transformer fluid tax credit certificate issued pursuant to Iowa Code chapter 476D may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to Iowa Code chapter 437A in an amount not more than the person received in soy-based transformer fluid tax credit certificates. To obtain the reimbursement, the person shall attach to the return required under section 437A.8 the soy-based transformer fluid tax credit certificates issued to the person and provide any other information the director may require. The director shall direct a warrant to be issued to the person for an amount equal to the tax imposed and paid by the person pursuant to Iowa Code chapter 437A but for not more than the amount of the soy-based transformer fluid tax credit certificates attached to the return. This subrule is rescinded December 31, 2009.

This rule is intended to implement Iowa Code section 437A.17B, chapter 476B as amended by 2008 Iowa Acts, Senate File 2405; section 437A.17C and chapter 476D as amended by 2008 Iowa Acts, Senate File 572; and chapter 476C.

**701—70.13(437A) Information confidential.** Iowa Code subsections 437A.14(2) and (3) apply generally to the director, deputies, auditors, and present or former officers and employees of the department. Disclosure of the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information is prohibited. Other persons having acquired this confidential information will be

bound by the same rules of secrecy under these Iowa Code provisions as any member of the department and will be subject to the same penalties for violations as provided by law.

DIVISION II  
STATEWIDE PROPERTY TAX

**701—70.14(437A) Who must file return.** Each taxpayer shall file a true and accurate return with the director. The return shall include all of the information prescribed in Iowa Code section 437A.21 and any other information or schedules requested by the director. The return shall be signed by an officer or other person duly authorized by the taxpayer and must be certified as correct. If the taxpayer was inactive or ceased the conduct of any activity for which the taxpayer's property was subject to the statewide property tax during the tax year, the return must contain a statement to that effect.

**701—70.15(437A) Time and place for filing return.** The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday or Sunday, the return will be due the first business day following the Saturday or Sunday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the mails, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: Property Tax Division, Hoover State Office Building, Des Moines, Iowa 50319.

**701—70.16(437A) Form for filing.** Replacement tax rule 70.3(437A) is incorporated herein by reference.

**701—70.17(437A) Payment of tax.** Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to Treasurer, State of Iowa. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

**701—70.18(437A) Statute of limitations.** Replacement tax rule 70.5(437A) is incorporated herein by reference.

**701—70.19(437A) Billings.**

**70.19(1) Notice of adjustments.** Replacement tax subrule 70.6(1) is incorporated herein by reference.

**70.19(2) Notice of assessment.** If, after following the procedure outlined in 70.6(1) "b," no agreement is reached and the person does not pay the amount determined to be correct to the director, a notice of the amount of tax due shall be sent to the taxpayer. This notice of assessment shall bear the signature of the director and will be sent by ordinary mail to the taxpayer.

A taxpayer has 60 days from the date of the notice of assessment to file a protest according to the provisions of rule 701—7.8(17A) or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) to the director and file a refund claim with the director within the applicable period provided in Iowa Code sections 437A.22 and 437A.14(1) "b" for filing such claims.

**70.19(3) Supplemental assessments.** Replacement tax subrule 70.6(3) is incorporated by reference.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—70.20(437A) Refunds.** Replacement tax subrules 70.7(1) to 70.7(3), 70.7(5) and 70.7(7) are incorporated herein by reference.

No credit or refund of taxes alleged to be unconstitutional shall be allowed if such taxes were not paid under written protest which specifies the particulars of the alleged unconstitutionality.

**701—70.21(437A) Abatement of tax.** The provisions of rule 701—7.31(421) are applicable to the statewide property tax.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—70.22(437A) Taxpayers required to keep records.**

**70.22(1)** Records required. The records required in this rule must be made available for examination upon request by the director or the director's authorized representative. The records must include all of those which would support the entries required to be made on the tax return. These records include but are not limited to:

*a.* Records associated with the assessed value and base year assessed value of property subject to the statewide property tax.

*b.* Records associated with the computation of the statewide property tax required to be shown due on the tax return.

*c.* Records associated with the book value of the local amount of any major addition by local taxing district.

*d.* Records associated with the book value of the statewide amount of any major addition.

*e.* Records associated with the transfer or disposal of all operating property in the preceding calendar year, by local taxing district.

*f.* Records associated with the book value of all other taxpayer property subject to the statewide property tax.

*g.* Records associated with the book value of any major addition, by situs, eligible for the urban revitalization exemption provided for in Iowa Code chapter 404.

*h.* All work papers associated with any of the records described in this rule.

*i.* Records associated with allocation of property subject to statewide property tax among local taxing districts.

**70.22(2)** The records required to be maintained by these rules shall be maintained by taxpayers for a period of ten years following the later of the original due date for the filing of a tax return in which the statewide property tax is reported, or the date on which such return is filed. Upon application to the director and for good cause shown, the director may shorten the period for which any records should be maintained by a taxpayer.

**701—70.23(437A) Credentials.** Replacement tax rule 70.10(437A) is incorporated herein by reference.

**701—70.24(437A) Audit of records.** Replacement tax rule 70.11(437A) is incorporated herein by reference.

These rules are intended to implement Iowa Code chapter 437A as amended by 2007 Iowa Acts, Senate File 278.

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TITLE X  
CIGARETTES AND TOBACCOCHAPTER 81  
ADMINISTRATION

[Prior to 12/17/86, Revenue Department[730]]

**701—81.1(453A) Definitions.** As used in this title the following definitions apply:

“*Bank*” means a bank designated and authorized by the director of revenue to sell cigarette stamps and set cigarette meters.

“*Carton*” means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

“*Cigarette licensee*” means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division I.

“*Counterfeit cigarettes*” means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the department, or the director’s authorized representative.

“*License*” and “*permit*” are used interchangeably.

“*Licensee*” means any person holding or required to obtain a permit or license of any kind under Iowa Code chapter 453A.

“*Meter settings*” means Iowa cigarette meters which imprint indicia on cigarette packages.

“*Package*” or “*pack*” means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

“*Revenue*” means any evidence of tax on cigarettes required by the department to be affixed to individual packages of cigarettes.

“*Stamps*” means Iowa Fusion stamps, 30,000 to a roll and Iowa hand stamps of any quantity authorized by the director to be applied to packages of cigarettes and little cigars.

“*Supplier*” means any person or firm authorized to manufacture or supply cigarette stamps for the department.

“*Tax*” means the tax imposed under Iowa Code chapter 453A on cigarettes or other tobacco products.

“*Taxpayer*” means any person required to collect or remit tax directly to the department or required to be licensed or to file any report or return or keep records under Iowa Code chapter 453A.

“*Tobacco*” means the same as “tobacco products” as defined in Iowa Code section 453A.42.

“*Tobacco licensee*” means any person who has or is required to obtain a permit of any kind under Iowa Code chapter 453A, division II.

In addition to these definitions, the definitions contained in Iowa Code sections 421B.2, 453A.1, and 453A.42 apply to these rules.

This rule is intended to implement Iowa Code chapter 453A as amended by 2004 Iowa Acts, Senate File 2296.

**701—81.2(453A) Credentials and receipts.** Employees of the department have official credentials and the taxpayer should require proof of the identity of any person claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer’s name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for a cash payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

**701—81.3(453A) Examination of records.** Within three years after a return or report is filed or within three years after the report or return became due, whichever is later, the department shall examine it, determine the amount of cigarette or tobacco tax due, and give notice of assessment to the taxpayer. If no return or report has been filed, the department may determine the amount of tax due and give notice thereof. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report or return made with the intent to evade tax, or in the case of a failure to file a report or return, or if a person purchases or is in possession of unstamped cigarettes. The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies and must provide that a claim for refund may be filed at any time during the period of extension.

Whenever books and records are examined by an employee designated by the director, whether to verify a return, report, or claim for refund or in making an audit, an assessment will be issued for any amount of tax due or a refund made for any amount of tax overpaid.

This rule is intended to implement Iowa Code sections 453A.15, 453A.28, and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

**701—81.4(453A) Records.** Every taxpayer subject to the provisions of Iowa Code chapter 453A shall keep, preserve, and make available to the department records for a period of three years. The following is a list of records subject to the provisions of this rule. For taxpayers using an electronic data interchange process or technology, also see 701—subrule 11.4(4).

**81.4(1) Cigarette manufacturer.** Licensed cigarette manufacturers are required to keep the following records.

- a. Records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.
- b. Records evidencing the transportation of cigarettes into Iowa.
- c. Records, including invoices, showing all sales of cigarettes to licensees.
- d. A record of all stamps purchased.
- e. Copies of all reports filed with the department.

Unlicensed cigarette manufacturers shipping cigarettes into Iowa are asked to keep records, including invoices, showing the sale of cigarettes in Iowa or the sale of cigarettes for shipment into Iowa.

Nothing in this rule shall be construed to affect the provisions of P.L. 95-575 (Contraband Cigarette Act, 18 USC Ch. 114) or P.L. 81-363 (Jenkins Act, 15 USC, Sec. 375).

**81.4(2) Cigarette distributing agent.**

- a. Records of the receipt of all cigarettes showing the amount of cigarettes received and from whom received.
- b. Records of all distribution of cigarettes showing the amount of cigarettes shipped, to whom and at whose direction the cigarettes were distributed.
- c. Records showing all exports of cigarettes.
- d. Copies of all reports filed with the department.
- e. Detailed inventory records.
- f. Freight receiving and shipping records.

**81.4(3) Cigarette distributors.**

- a. Records, including invoices, showing the purchase of all cigarettes sold, used or stored in Iowa.
- b. Records, including invoices, showing the sale of cigarettes in Iowa.
- c. Detailed inventory records.
- d. Freight receiving and shipping records.
- e. A record of all stamps purchased.
- f. Copies of all reports filed with the department.

**81.4(4) Wholesaler.**

- a. Records, including invoices, evidencing the purchase of all cigarettes.
- b. Records, including invoices, evidencing the sale of all cigarettes.

c. Detailed inventory records.

**81.4(5) Cigarette vendor.**

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Records evidencing the sale of cigarettes.

c. Inventory records.

d. Records of all cigarette vending machines owned, furnished, installed, serviced, operated or maintained by the vendor and the location of each.

**81.4(6) Cigarette retailer.**

a. Records, including invoices, evidencing the purchase of all cigarettes.

b. Inventory records.

**81.4(7) Tobacco distributor.** The same records as a cigarette distributor but with respect to tobacco, excluding records of stamps purchased. (See 81.4(3))

**81.4(8) Tobacco subjobber.** The same records as a cigarette wholesaler but with respect to tobacco.

**81.4(9) Tobacco retailer.** The same records as a cigarette retailer but with respect to tobacco.

**81.4(10) Common carrier engaged in transporting cigarettes or tobacco products into Iowa.**

a. Copies of bills of lading or manifests as to each transportation of cigarettes or tobacco.

b. Log book or trip sheets.

**81.4(11) Microfilm and related records system.** Microfilm, microfiche, COM (computer on machine) and other related reduction in storage systems will be referred to as “microfilm” in this rule.

Microfilm reproductions of general books of account, such as a cash book, journals, voucher registers, ledgers, etc., are not acceptable other than those that have been approved by the Internal Revenue Service under Revenue Procedure 76-43, Section 302. However, microfilm reproductions of supporting records of detail, such as sales invoices, purchase invoices, credit memoranda, etc., may be allowed providing all the following conditions are met and accepted by the taxpayer.

a. Appropriate facilities are provided to ensure the preservation and readability of the films.

b. Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

c. The taxpayer agrees to provide transcripts of any information contained on microfilm which may be required for purposes of verification of tax liability.

d. Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and for the copying of records.

e. Any audit of “detail” on microfilm may be subject to sample audit procedures, to be determined at the discretion of the director or the director’s designated representative.

f. A posting reference must be on each invoice.

g. Credit memoranda must carry a reference to the document evidencing the original transaction.

h. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transaction for which exemption is sought.

**81.4(12) Automatic data processing records.** Automatic data processing is defined in this rule as including electronic data processing (EDP) and will be referred to as ADP.

a. An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer’s tax liability.

b. ADP records must provide an opportunity to trace any transaction back to the original source or forwarded to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.

c. A general ledger with source references will be produced as hard copy to coincide with financial reports of tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be produced periodically.

d. Supporting documents and audit trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the director or the director’s designated representative upon request. The system should be so designed that the supporting

documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available. (An audit trail is defined as the condition of having sufficient documentary evidence to trace an item from source (invoice, check, etc.) to a financial statement or tax return; or the reverse; that is, to have an auditable system.)

*e.* Program documentation. A description of the ADP portion of the accounting program should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

- (1) The application being performed;
- (2) The procedure employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and
- (3) The controls used to ensure accurate and reliable processing. Program and systems changes, together with their effective dates should be noted in order to preserve an accurate chronological record.

*f.* Storage of ADP output will be in appropriate facilities to ensure preservation and readability of output.

**81.4(13) General requirements.** If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

**81.4(14) Other persons.** The director may require any person other than those previously listed in this rule to maintain books and records as deemed necessary by the director.

This rule is intended to implement Iowa Code sections 453A.15 and 453A.45 as amended by 2004 Iowa Acts, Senate File 2296, and Iowa Code sections 453A.18, 453A.19, 453A.24, and 453A.49.

**701—81.5(453A) Form of invoice.** Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453A or these rules, it shall minimally contain the following information:

1. The seller's name, address.
2. The purchaser's name, address and permit number (if any).
3. The date of sale.
4. All prices and discounts stated separately.
5. An indication as to whether cigarettes or tobacco products are being sold with or without tax stamps attached or tax included.
6. The origination and destination points.

This rule is intended to implement Iowa Code sections 453A.15, 453A.25, 453A.45 and 453A.49.

**701—81.6(453A) Audit of records—cost, supplemental assessments and refund adjustments.** The department shall have the right and duty to examine or cause to be examined the books, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return or report filed or determining the tax liability of any taxpayer under Iowa Code chapter 453A.

When it is determined, upon audit, that any person dealing in cigarettes owes additional tax, the costs of the audit are assessed against such person as additional penalty.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue

involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code section 453A.30.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—81.7(453A) Bonds.** When bonds are required by Iowa Code chapter 453A or these rules, said bonds shall be in the form of cash, a certificate of deposit or a bond issued by a surety company licensed to do business in the state of Iowa, payable to the state of Iowa and in a form approved by the director. Bonds required by tobacco distributors must be issued by a surety company licensed to do business in Iowa. However, upon approval by the director, a cash bond or a certificate of deposit will be accepted by the department as a substitute for the surety bond. (See Iowa Code section 453A.44(4).)

This rule is intended to implement Iowa Code sections 453A.14 and 453A.44.

**701—81.8(98) Penalties.** Renumbered as 701—10.76(98), IAB 1/23/91.

**701—81.9(98) Interest.** Renumbered as 701—10.77(98), IAB 1/23/91.

**701—81.10(98) Waiver of penalty or interest.** Renumbered as 701—10.78(98), IAB 1/23/91.

**701—81.11(453A) Appeal—practice and procedure before the department.**

**81.11(1) Procedure.** The practice and procedure before the department is governed by Iowa Code chapter 17A and 701—Chapter 7 of the department's rules.

**81.11(2) Appeals—time limitations.** For notices of assessment or refund denial issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of the assessment notice or refund denial, or if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 453A.25, 453A.28, 453A.29, 453A.46, 453A.48, and 453A.49.  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—81.12(453A) Permit—license revocation.**

**81.12(1) Cigarette permits.** Cigarette permits issued by the department must be revoked if the permittee willfully violates the provisions of Iowa Code section 453A.2 (sale or gift to minors). The department may revoke permits issued by the department for violation of any other provision of division I of Iowa Code chapter 453A or the rules promulgated thereunder. (Also see Iowa Code chapter 421B and rule 701—84.7(421B).) The revocation shall be subject to the provisions of rule 701—7.23(17A). The notice of revocation shall be given to the permittee at least ten days prior to the hearing provided therein. The department will revoke a permit of a permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support unit in regard to the permit holder, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

If a retailer or employee of a retailer has violated Iowa Code section 453A.2 or 453A.36(6), the city council, county board of supervisors, or the Iowa department of public health shall assess a penalty as provided in Iowa Code section 453A.22(2) as amended by 2003 Iowa Acts, chapter 26. The penalty procedures are governed by Iowa Code section 453A.22(1) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—84.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer who is an individual if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.

If a permit is revoked under this subrule, except for the receipt of a certificate of noncompliance from the child support recovery unit, the permit holder cannot obtain a new cigarette permit of any kind nor

may any other person obtain a permit for the location covered by the revoked permit for a period of one year unless good cause to the contrary is shown to the issuing authority. If a retail permit is suspended or revoked, the suspension or revocation applies only to the place of business where the violation occurred and not to any other place of business covered by the permit.

The department or local authority must report the suspension or revocation of a retail permit to the department of public health within 30 days of the suspension or revocation.

**81.12(2) Tobacco licenses.** The director may revoke, cancel or suspend the license of any tobacco distributor or tobacco subjobber for violation of any provision in division II of Iowa Code chapter 453A, the rules promulgated thereunder, or any other statute applicable to the sale of tobacco products. The licensee shall be given ten days' notice of a revocation hearing under Iowa Code section 453A.48(2) and rule 701—7.23(17A). No license may be issued to any person whose license has been revoked under Iowa Code section 453A.44(11) for a period of one year. The department will revoke a license of a licensee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 453A.22 as amended by 2003 Iowa Acts, chapter 26, and sections 453A.13, 453A.44(11) and 453A.48(2).  
[ARC 0251C, IAB 8/8/12, effective 9/12/12]

#### **701—81.13(453A) Permit applications and denials.**

**81.13(1) Applications for permits.** The application forms for all permits issued under Iowa Code chapter 453A are available from the department upon request. The applications shall include, but not be limited to:

- a. The nature of the applicant's business;
- b. The type of permit requested;
- c. The address of the principal office of the applicant;
- d. The place of business for which the permit is to apply;
- e. The names and addresses of principal officers or members, not to exceed three, if the business is not a sole proprietorship;
- f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);
- g. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant;
- h. Whether or not the applicant possesses any other permit issued under Iowa Code chapter 453A; and
- i. The signature of the person making the application. For electronically transmitted applications, the application form shall state that, in lieu of the person's handwritten signature, the person's E-mail address or the person's fax signature will constitute a valid signature.

**81.13(2) Denial of application for permit.** The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The director will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

**81.13(3) *Revocation of a permit.*** The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 701—13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

The department will revoke the permit of any permit holder, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

**81.13(4) *Applications for retail cigarette permits.*** Applications for retail cigarette permits are supplied by the department to city councils and county boards of supervisors. The application must be obtained from and filed with the individual council or board. The board of supervisors or the city council is required by 1995 Iowa Acts, chapter 115, to deny a retail permit to any applicant, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the board of supervisors or city council with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections 453A.13, 453A.16, 453A.17, 453A.22, 453A.23, and 453A.44, and 1995 Iowa Acts, chapter 115.

**701—81.14(453A) Confidential information.** The release of information contained in any reports or returns filed under Iowa Code chapter 453A or obtained by the department in the administration of Iowa Code chapter 453A is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 453A. Any requests for information must be made pursuant to rule 701—6.2(17A). See rule 701—6.3(17A).

Any request for information pertaining to a taxpayer's business affairs, operations, source of income, profits, losses, or expenditures must be made in writing to the director. The taxpayer to whom the information relates will be notified of the request for information and will be allowed 30 days to substantiate any claim of confidentiality under Iowa Code chapter 22 or any other statute such as Iowa Code section 422.72. If substantiated, the request will be denied; otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code sections 453A.25 and 453A.49.

**701—81.15(98) Request for waiver of penalty.** Renumbered as 701—10.79(98), IAB 1/23/91.

**701—81.16(453A) Inventory tax.** All persons required to obtain a permit under Iowa Code section 453A.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette tax stamps and unused metered imprints in their possession at the close of business on the day preceding the effective date of an increase in the tax rate.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale within 30 days of the inventory date. The tax is equal to the difference between the amount paid

for cigarette stamps or metered imprints purchased prior to the tax increase and the amount that is to be paid for cigarette stamps or metered imprints purchased after the tax increase.

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 453A.8 shall not be considered.

The inventory tax is applicable only when there is an increase in the tax rate. See rule 701—82.11(453A) for an explanation of whether a refund is allowable when there is a decrease in the tax rate.

This rule is intended to implement Iowa Code sections 453A.6, 453A.40, and 453A.43.

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CHAPTER 84  
UNFAIR CIGARETTE SALES  
[Prior to 12/17/86, Revenue Department[730]]

**701—84.1(421B) Definitions.** For purposes of this chapter “wholesaler” and “retailer” mean a cigarette wholesaler and cigarette retailer as defined in Iowa Code section 421B.2. See opinion of the Attorney General, Griger to Bair, Director, Iowa Department of Revenue, 80-1-15. “Sale” or “sales” shall include an offer for sale.

This rule is intended to implement Iowa Code section 421B.2.

**701—84.2(421B) Minimum price.** The formula for determining the “cost” to a wholesaler or retailer as defined in Iowa Code section 421B.2 is not conclusive. The retailer, wholesaler or the department may prove that the “cost” is either higher or lower.

Any wholesaler or retailer who desires to prove that the wholesaler’s or retailer’s cost is less than the statutory presumptive cost computed according to the Iowa unfair cigarette sales Act, Iowa Code chapter 421B, shall submit a petition for approval of a lower cost along with actual cost data to the department of revenue. The statutory presumptive cost must be used in determining minimum price until approval has been granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester’s permit or seek an injunction pursuant to Iowa Code section 421B.10 to prevent such action.

Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition. The department shall notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department’s determination, the requester may file a protest within 60 days of the department’s decision in accordance with rule 701—7.8(17A).

Costs of doing business shall include, but are not limited to, freight charges, labor, and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, taxes, insurance, advertising expenses, and any other operational and administrative costs. The requester shall set forth the basis for allocated costs. When the computed cost amounts to any fractional part of a cent, the cost must not be less than the next higher cent. However, sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule. See rule 84.5(421B).

**84.2(1) Wholesaler’s cost of cigarettes.** The statutory method for determining the wholesaler’s cost of cigarettes is as follows:

- a. “Basic cost of cigarettes” equals the lowest of true invoice cost, or lowest replacement cost, less trade or cash discounts plus one half of the state cigarette tax.
- b. “Cost to wholesaler” equals the basic cost of cigarettes plus 3 percent of the basic cost plus the one half of the state cigarette tax not already included.

**84.2(2) Retailer’s cost of cigarettes.** The statutory method for determining the retailer’s cost of cigarettes is as follows:

- a. “Basic cost of cigarettes” equals the lower of either true invoice cost exclusive of state cigarette tax or lowest replacement cost exclusive of state cigarette tax, minus trade or cash discounts plus one half of the state cigarette tax.
- b. “Cost to retailers” equals the basic cost plus 3 percent of the basic cost, to the extent the retailer is allowed discounts ordinarily allowed wholesalers, plus 6 percent of the basic cost, plus the one half of the state cigarette tax not already included.

For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.

The following example will demonstrate the application of this rule.

Manufacturer's list price per 1000 cigarettes	\$115.70
Invoice price to wholesaler	\$115.70
Less 2% discount	2.31
Plus ½ of the tax	<u>9.00</u>
Basic cost of cigarettes	\$122.39
Plus 3% of basic cost	<u>3.67</u>
Retailer's basic cost	\$126.06
Plus ½ of the tax	<u>9.00</u>
Minimum cost to wholesaler per 1000 cigarettes	\$135.06
Per carton	\$27.01
Less ½ state tax	<u>1.80</u>
Retailer's basic cost	\$25.21
Plus 6% of basic cost	1.51
Plus ½ of state tax	<u>1.80</u>
Minimum cost to retailer	\$28.52
Per pack	2.86/pack

This rule is intended to implement Iowa Code sections 421B.2, 421B.3, 421B.5, 421B.6 and 421B.9. [ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—84.3(421B) Combination sales.** Whenever cigarettes and another item are offered for sale at a total combined price, the sales price shall not be lower than the “cost to the wholesaler or retailer” of all articles sold. The “cost to the wholesaler or retailer” of all of the articles sold on a combined basis shall be determined under Iowa Code section 421B.2, subsections (1), (3), and (4).

If a promotional gift is given to the wholesaler or retailer by a cigarette manufacturer at no cost, which gift is to be given to consumers at no cost upon the sale of cigarettes, the minimum sales price will not be affected. The invoice cost of the promotional gift is zero, and therefore, the “cost to the wholesaler” or “cost to the retailer” of the promotional gift is zero. If, however, the wholesaler or retailer were to purchase items to be given away with the purchase of cigarettes by consumers, the minimum sales price would increase. The “cost to the wholesaler” or the “cost to the retailer” of the promotional item would be based upon the lower of invoice cost or replacement cost. (See 1958 O.A.G. 22.)

This rule is intended to implement Iowa Code section 421B.4.

**701—84.4(421B) Retail redemption of coupons.** The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. (See 1986 O.A.G. 68.) Manufacturer incentives to the consumer in lieu of a coupon which reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.

This rule is intended to implement Iowa Code section 421B.3.

**701—84.5(421B) Exempt sales.**

**84.5(1) Sales between wholesalers.** The sale price of cigarettes from one wholesaler to another wholesaler is not required to have included therein the “cost to the wholesaler” as defined in Iowa Code section 421B.2(4). All of the provisions of Iowa Code section 421B.3 shall apply to the subsequent sale by the purchasing wholesaler to any other person except another wholesaler.

**84.5(2) Exempt sales.** The provisions of Iowa Code chapter 421B do not apply to the following sales transactions:

- a. An isolated sale, or
- b. A bona fide clearance sale for the purpose of discontinuing trade in cigarettes as long as the sale states the reason for the sale and the quantity of cigarettes to be sold, or
- c. The sale of damaged or imperfect cigarettes as long as the sale states the reason for the sale and the quantity of cigarettes to be sold.

**84.5(3) Sales to meet lawful competition.** A wholesaler or retailer may sell cigarettes below cost in good faith in order to meet the price of a competitor who is selling the same article at the cost to the competitor as defined in chapter 421B. Sales made under the exemptions contained in Iowa Code section 421B.6 and subrules 84.5(1) and 84.5(2) and sales of a bankrupt or forced sale shall not be considered in determining the cost to a competitor.

This rule is intended to implement Iowa Code sections 421B.5 to 421B.7.

**701—84.6(421B) Notification of manufacturer’s price increase.** For purposes of determining the minimum cost of cigarettes to wholesalers or retailers, all manufacturers dealing with Iowa permittees shall notify the department in writing or by telegram within five working days of the effective date of any change in the manufacturer’s list price for cigarettes.

This rule is intended to implement Iowa Code sections 421B.8 and 421B.11.

**701—84.7(421B) Permit revocation.** The department may revoke any permit issued under division I of Iowa Code chapter 453A for any violation of Iowa Code chapter 421B. The authority to revoke a retail cigarette permit for a violation of Iowa Code chapter 421B rests in the department even though the permit was issued by a city or county. The revocation shall be effectuated under the provisions of rule 701—81.12(453A).

Once the permit is revoked, the permittee cannot obtain another cigarette permit, nor may a permit be issued for the location covered by the revoked permit regardless of the identity of the applicant, for a period of at least six months.

This rule is intended to implement Iowa Code section 421B.11.

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CHAPTER 85  
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I  
TOBACCO MASTER SETTLEMENT AGREEMENT

**701—85.1(453C) National uniform tobacco settlement.** In 1998 the state of Iowa entered into an agreement with cigarette manufacturers called the Master Settlement Agreement (MSA). Subsequent to entering into that agreement, in 1999 the Iowa general assembly enacted Iowa Code chapter 453C. The statute requires the department of revenue to promulgate regulations to ascertain the amount of excise tax paid on cigarettes sold by nonparticipating tobacco product manufacturers in Iowa each year.

**701—85.2(453C) Definitions.** For the purposes of this chapter, the definitions set forth in Iowa Code section 453C.1 shall apply.

**701—85.3(453C) Report required.** Reports must be filed by tobacco products distributors, cigarette distributors, and persons who sell tobacco products at retail that were purchased from a person who is not required to file a distributor report. The report must be filed annually on or before the last day of the month following the close of the calendar year in which the sales were made and must be in a form and manner requested by the department. The reports are to be mailed to Iowa Department of Revenue, Compliance Division, Cigarette Tax Unit, P.O. Box 10456, Des Moines, Iowa 50306-0456.

**701—85.4(453C) Report information.** The report must include the following information with respect to units sold that were not purchased from a participating tobacco product manufacturer or units sold that were purchased from a participating tobacco product manufacturer but are not units sold as covered by the MSA:

1. The number of units sold.
2. The brand of the units sold.
3. The name and address of the person from whom each unit was purchased.
4. The name and address of the manufacturer of the unit, if known.
5. The name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

A retailer may need to file a report when purchasing roll-your-own tobacco or cigarettes over the Internet, through a catalog from a vendor located outside of Iowa, from an Indian tribe or from an enrolled member of an Indian tribe located on a reservation in or outside Iowa, by mail order, or from a vendor located in another state.

A retailer must also, upon request by the department, report information with respect to units sold that were purchased from any participating tobacco product manufacturer.

**701—85.5(453C) Record-keeping requirement.** Every person who sells at retail tobacco products purchased from a person who is not required to file a report required by this chapter and every tobacco products distributor and cigarette distributor subject to this reporting rule must maintain complete and accurate records and underlying documentation for five years to support the data required to be supplied to the department under rule 701—85.4(453C). Upon request, all requested records and documents must be provided to the department.

**701—85.6(453C) Confidentiality.** The department of revenue may disclose any and all information filed pursuant to rule 701—85.4(453C) to the attorney general for use in enforcing compliance with Iowa Code chapter 453C.

These rules are intended to implement Iowa Code chapter 453C.

**701—85.7 to 85.20** Reserved.

DIVISION II  
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

**701—85.21(80GA,SF375) Definitions.** For purposes of this division, the definitions set forth in 2003 Iowa Acts, Senate File 375, section 2, shall apply.

**701—85.22(80GA,SF375) Directory of tobacco product manufacturers.**

**85.22(1)** *Directory of cigarettes approved for stamping and sale in Iowa.* A tobacco product manufacturer and a brand family shall not be included in the directory authorized by 2003 Iowa Acts, Senate File 375, section 3, after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of 2003 Iowa Acts, Senate File 375, section 3. Nonparticipating manufacturers and their brand families shall not be included in the directory after April 30 each year until and unless the attorney general has determined that the nonparticipating tobacco product manufacturer is in full compliance with 2003 Iowa Acts, Senate File 375, section 3, and that neither subsection (2)“b”(1) nor (2)“b”(2) of section 3 applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory. A tobacco product manufacturer or brand family shall be deleted from the directory if a determination is made by the attorney general that the tobacco product manufacturer no longer meets the requirements of 2003 Iowa Acts, Senate File 375, section 3, or that either subsection (2)“b”(1) or (2)“b”(2) of section 3 applies.

**85.22(2)** *Notice of inclusion in directory.* The attorney general shall notify a tobacco product manufacturer by mail that it has met the requirements of 2003 Iowa Acts, Senate File 375, section 3, and will be included in the directory. This notice shall include each brand family that the attorney general determines will be included in the directory.

**85.22(3)** *Notice of noninclusion in or deletion from the directory.* Tobacco product manufacturers that have applied for inclusion in the directory shall be notified in writing of a decision made by the attorney general not to include in or to delete from the directory the tobacco product manufacturer or a brand family. Such notice shall be served on the tobacco product manufacturer's agent for service of process by certified mail.

**85.22(4)** *Procedure for contesting notice of noninclusion or deletion.* A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.8(17A). The protest shall conform generally to the requirements of 701—subrules 7.8(1) through 7.8(10) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with the rules set forth in 701—Chapter 7, rules 701—7.10(17A), 701—7.12(17A) and 701—7.14(17A) to 701—7.16(17A), 701—subrule 7.17(8), and rules 701—7.19(17A) to 701—7.22(17A) to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.17(8), except that no appeal to or on motion of the state board of tax review or any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.17(9). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the

tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

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TITLE XI  
INHERITANCE, ESTATE, GENERATION SKIPPING, AND FIDUCIARY INCOME TAX  
CHAPTER 86  
INHERITANCE TAX  
[Prior to 12/17/86, Revenue Department[730]]

**701—86.1(450) Administration.**

**86.1(1) Definitions.** The following definitions cover Chapter 86.

“*Administrator*” means the administrator of the compliance division of the department of revenue.

“*Child*” means a biological or adopted issue entitled to inherit pursuant to Iowa Code chapter 633.

“*Compliance division*” is the administrative unit of the department created by the director to administer the inheritance, estate, generation skipping transfer, and fiduciary income tax laws of the state.

“*Department*” means the department of revenue.

“*Devise*,” when used as a verb, means to dispose of property, both real and personal, by a will.

“*Director*” means the director of revenue.

“*Estate*” means the real and personal property, tangible and intangible, of the decedent or a trust, that over time may change in form due to sale, reinvestment, or otherwise, and augmented by accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom. For the definitions of “gross estate” and “net estate” under this chapter, see those terms as referenced in this subrule.

“*Executor*” means any person appointed by the court to administer the estate of a testate decedent.

“*Fiduciary*” includes personal representative, executor, administrator, and trustee. This term includes both temporary and permanent fiduciaries appointed by the court to settle the decedent’s probate estate and also the trustee of an inter vivos trust where the trust assets are part of the gross estate for inheritance tax purposes.

“*Gross estate*” as used for inheritance tax purposes as defined in Iowa Code section 450.2 includes all those items, or interests in property, passing by any method of transfer specified in Iowa Code section 450.3 without reduction for liabilities specified in Iowa Code section 450.12. The gross estate for tax purposes may not be the same as the estate for probate purposes. For example, property owned as joint tenants with right of survivorship, property transferred with a retained life use, gifts in excess of the annual gift tax exclusion set forth in Internal Revenue Code Section 2503(b) and within three years of death, transfers to take effect in possession or enjoyment at death, trust property, “pay on death” accounts, annuities, and certain retirement plans, are not part of the decedent’s probate estate, but are includable in the decedent’s gross estate for inheritance tax purposes. *In re Louden’s Estate*, 249 Iowa 1393, 92 N.W.2d 409 (1958); *In re Sayres’ Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Toy’s Estate*, 220 Iowa 825, 263 N.W. 501 (1935); *In re Mann’s Estate*, 219 Iowa 597, 258 N.W. 904 (1935); *Matter of Bliven’s Estate*, 236 N.W.2d 366 (Iowa 1975); *In re English’s Estate*, 206 N.W.2d 305 (Iowa 1973).

Effective for estates of a decedent dying on or after July 1, 2003, property and any interest in or income from any of the estates and property, which pass from the decedent owner in any manner, are subject to tax if the passing interest is in one of the following: (1) real estate and tangible personal property located in Iowa regardless of whether the decedent was a resident of Iowa at death; and (2) intangible personal property owned by a decedent domiciled in Iowa.

“*Gross share*” means the total amount of property of an heir, beneficiary, surviving joint tenant, or transferee, without reduction of those items properly deductible in computing the net shares. The total of all gross shares is equal to the gross estate.

“*Heir*” includes any person, except the surviving spouse, who is entitled to property of the decedent under the statutes of intestate succession.

“*Internal Revenue Code*” means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(5) and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

“*Intestate estate*” means an estate in which the decedent did not have a will. Administration of such estates is governed by Iowa Code sections 633.227 through 633.230. Rules of inheritance for such estates are found in Iowa Code sections 633.211 through 633.226.

“*Issue*,” for the purpose of intestate succession, means all lawful lineal descendants of a person, whether biological or adopted. For details regarding intestate succession, see Iowa Code sections 633.210 through 633.226. For details regarding partial intestate succession, see Iowa Code section 633.272.

“*Net estate*” means the gross estate less those items specified in Iowa Code section 450.12 as deductions in determining the net shares of property of each heir, beneficiary, surviving joint tenant, or transferee. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972). The total of all net shares of an estate must equal the total of the net estate.

“*Net share*” means the gross share less the liabilities, if any, which are properly deductible from the gross share of an heir, beneficiary, surviving joint tenant, or transferee. The law of abatement of shares may be applicable for purposes of determining the net share subject to tax. See Iowa Code section 633.436; *In re Estate of Noe*, 195 N.W.2d 361 (Iowa 1972); *Colthurst v. Colthurst*, 265 N.W.2d 590 (Iowa 1978); *In re Estate of Duhme*, 267 N.W.2d 688 (Iowa 1978). However, see Iowa Code section 633.278 for property subject to a mortgage.

“*Personal representative*” shall have the same meaning as the term is defined in Iowa Code section 633.3(29) and shall also include trustees. For information regarding claims of a personal representative, see Iowa Code section 633.431.

“*Probate*” means the administration of an estate in which the decedent either had or did not have a will. Jurisdiction over the administration of such estates, among other matters, is by the district court sitting in probate. For further details on the subject matter and personal jurisdiction of the district court sitting in probate, see Iowa Code sections 633.10 through 633.21. For matters regarding the procedure in probate, see Iowa Code sections 633.33 through 633.53.

“*Responsible party*” is the person liable for the payment of tax under this chapter. See 701—86.2(450).

“*Simultaneous deaths*” occur when the death of two or more persons occurs at the same time or there is not sufficient evidence that the persons have died otherwise than simultaneously. For distribution of property in this situation, see Iowa Code sections 633.523 through 633.528.

“*Stepchild*” means the child of a person who was married to the decedent at the time of the decedent’s death, or the child of a person to whom the decedent was married, which person died during the marriage of the decedent.

“*Surviving spouse*” means the legally recognized surviving wife or husband of the decedent.

“*Tax*” means the inheritance tax imposed by Iowa Code chapter 450.

“*Taxpayer*” means a person liable for the payment of the inheritance tax under Iowa Code section 450.5 and includes the executor or personal representative of an estate, the trustee or other fiduciary of property subject to inheritance tax, and includes each heir, beneficiary, surviving joint tenant, transferee, or other person becoming beneficially entitled to any property or interest therein by any method of transfer specified in Iowa Code section 450.3, as subject to inheritance tax with respect to any inheritance tax due on the respective shares of the property.

“*Trustee*” means the person or persons appointed as trustee by the instrument creating the trust or the person or persons appointed by the court to administer the trust.

“*Trusts*” means real or personal property that is legally held by a person or entity for the benefit of another. This includes, but may not be limited to, express trusts, trusts imposed by court order, trusts administered by the court, and testamentary trusts. Such trusts are subject to Iowa Code chapter 450, even in situations when the estate consists solely of trust property.

“*Unknown heirs*” means heirs to an estate in which the identities of the heirs or the place of residency of the heirs cannot be ascertained with reasonable certainty.

“*Will*” includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. For information regarding mutual and contractual wills, see Iowa Code section 633.270.

**86.1(2) *Delegation of authority.*** The director delegates to the administrator, subject always to the supervision and review by the director, the authority to administer the Iowa inheritance tax. This delegated authority specifically includes, but is not limited to, the determination of the correct inheritance tax liability; making assessments against the taxpayer for additional inheritance tax due; authorizing refunds of excessive inheritance tax paid; issuing receipts for inheritance tax paid; executing releases of the inheritance tax lien; granting extension of time to file the inheritance tax return and pay the tax due; granting deferments to pay the inheritance tax on a property interest to take effect in possession or enjoyment at a future date; requesting or waiving the appraisal of property subject to the inheritance tax and the imposition of penalties for failure to timely file or pay the inheritance tax. The administrator may delegate the examination and audit of inheritance tax returns to the supervisors, examiners, agents, and any other employees or representatives of the department.

**86.1(3) *Information deemed confidential.*** Federal tax returns, federal return information, inheritance tax returns, and the books, records, documents, and accounts of any person, firm, or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. Section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

**86.1(4) *Information not confidential.*** Copies of wills, the filing of an inheritance tax lien, release of a real estate lien, probate inventories, trust instruments, deeds and other documents which have been filed for public record are not deemed confidential by the department.

**86.1(5) *Forms.*** The final inheritance tax return, inheritance tax receipts, and forms for the audit, assessment, and refund of the inheritance tax shall be in such form as may be prescribed or approved by the director—see 701—8.3(17A).

**86.1(6) *Safe deposit boxes and joint accounts.*** Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. However, all persons, banks, credit unions, and savings and loan associations are required to notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

This rule is intended to implement Iowa Code chapter 22 and Iowa Code sections 450.1 and 450.2 as amended by 2003 Iowa Acts, chapter 95, sections 1 and 2, and sections 421.2, 450.67, 450.68, 450.94, 450.97 and 450B.7.

#### **701—86.2(450) Inheritance tax returns and payment of tax.**

**86.2(1) *Filing of an inheritance tax return.*** Estates meeting certain requirements must file an inheritance tax return, and it is the duty of certain persons associated with the estate to file the inheritance tax return as follows:

*a. Mandatory filing.* The inheritance tax return provided for in subrule 86.2(2) must be filed if the gross share of any heir, beneficiary, transferee, or surviving joint tenant exceeds the exemptions allowable in Iowa Code sections 450.4 and 450.9. In addition, if Iowa real estate is includable in the gross estate, the return must be filed, even if no tax is due, prior to the issuance of a no tax due certificate.

Effective July 1, 2001, an estate is required to file an Iowa inheritance tax return if the entire estate of the decedent exceeds the sum of \$25,000 after deducting the liabilities of the estate.

*b. Who must file.* If the decedent's estate is probated as provided in Iowa Code chapter 633 or administered as provided in Iowa Code section 450.22, the personal representative of the estate is charged with the duty of filing the return with the department. If the personal representative of the estate fails to file the return or if the estate is not probated, it shall be the duty of those heirs, beneficiaries, transferees, surviving joint tenants, and trustees who receive shares in excess of the allowable exemptions or shares which are taxable in whole or in part, without the deduction of liabilities, and those individuals in receipt of the decedent's property are either jointly or severally to file the return with the department.

*c. Who is not required to file a return for estate of decedents dying on or after July 1, 2004.* Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if one of the following situations is applicable:

(1) All estate assets are held solely in joint tenancy with right of survivorship between husband and wife alone; or

(2) All estate assets are held solely in joint tenancy with right of survivorship, and not as tenants in common, solely between the decedent and individuals listed in Iowa Code section 450.9 as individuals that are entirely exempt from Iowa inheritance tax; or

(3) All assets are passing by beneficiary designation pursuant to a trust and are intended to pass the decedent's property at death or through a nonprobate transfer solely to individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on their relationship to the decedent. The entire amount of property, interest in property, and income passing solely to the surviving spouse and to parents, grandparents, great-grandparents, and other lineal ascendants, to children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants is exempt from tax; or

(4) All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth above in subsection (3).

Paragraph 86.2(1) "c" does not apply to interests in an asset or assets that pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

*d. General rules.* An Iowa inheritance tax return must be filed if estate assets pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

(1) If an inheritance tax return is not required because the estate meets the criteria in paragraph 86.2(1) "c," the final report (beginning with Iowa Code section 633.469) need not contain an inheritance tax receipt (clearance) issued by the department, but must properly certify that one of the criteria set forth in paragraph 86.2(1) "c" has been met as set forth in Iowa Code section 450.58(2).

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. A copy of this affidavit must also be filed with the department with a schedule showing the value of the property for the purpose of ascertaining the basis of the property.

(3) If a return is filed with the department and the return is not required to be filed, the department will retain the return as required by statutes governing retention of returns. However, the department will not process the filed return if the statute does not require that the return be filed. The department will not issue a clearance in an estate in which a return is not required to be filed.

**86.2(2) Form and content—inheritance tax return.**

*a. Estates of decedents dying prior to July 1, 1983.* Rescinded IAB 10/13/93, effective 11/17/93.

*b. Estates of decedents dying on or after July 1, 1983.* For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return is substituted in lieu thereof. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules

which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of \$10,000 is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

*c. Special rule when the surviving spouse succeeds to property in the estate.* Effective for estates of decedents dying on or after January 1, 1988, the following rules apply when the surviving spouse succeeds to property in the estate:

(1) If all of the property includable in the gross estate for inheritance tax purposes is held in joint tenancy with right of survivorship by husband and wife alone, an inheritance tax return is not required to be filed and a certificate from the department stating no inheritance tax is due is not required to release the inheritance tax lien under Iowa Code section 450.7(2).

(2) If any of the property includable in the gross estate passes to the surviving spouse by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the surviving spouse is not the only surviving joint tenant, an inheritance tax return is required to be filed.

*d. Estates of decedents dying on or after July 1, 1999.* In addition to the special rule for surviving spouses set forth in paragraph “c” of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. Property of the estate passing by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the title of property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the decedent or by any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

The exemption granted to stepchildren is limited to that class of step relationships exclusively. The exemption is not extended to include any lineal ascendants or descendants of the step relationship, such as stepparent or stepgrandparent. For a definition of “stepchild” for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. A net estate that is less than \$10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than \$25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over \$25,000:

SCHEDULE B			
Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.			
If the share is:			
Not over \$12,500, the tax is 5% of the share.			
If over	But not over	Tax is	Of excess over
\$ 12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000

100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000
SCHEDULE C			
Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, stepgrandchild, and all other individual persons. There is no exemption.			
If the share is: Not over \$50,000, tax is 10% of the share.			
If over	But not over	Tax is	Of excess over
\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000
100,000	and up	11,000 + 15%	100,000
SCHEDULE D			
A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:			
Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) and 2055:			
15% of the amount.			
SCHEDULE E			
Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state, the rate of tax imposed in excess of \$500:			
10% of the amount.			
SCHEDULE F			
An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:			
5% of the amount.			
SCHEDULE G			
A public library or public art gallery within this state, open to the use of the public and not operated for gain, or to a hospital within this state, or a trustee for such use within this state, or to a municipal corporation for purely public purposes:			
Entirely exempt: No tax.			
(Also included in this class are bequests for the care and maintenance of the cemetery or burial lot of a decedent or the decedent's family.)			

**86.2(3) Liability for the tax.** The personal representative of an estate is personally liable for the total tax due from any person receiving property subject to the tax, to the extent the person's share of the

property is subject to the jurisdiction of the probate court and the personal representative. The trustee of trust property subject to tax is personally liable for the total tax due from a beneficiary to the extent of the person's share of the trust property. Each heir, beneficiary, transferee, joint tenant, and any other person being beneficially entitled to any property subject to tax is personally liable for the tax due on all property received subject to the tax. The person is not liable for the tax due on another person's share of property subject to tax, unless the person is also a personal representative, trustee, or other fiduciary liable for the tax by reason of having jurisdiction over the property, the succession to which is taxable. *Eddy v. Short*, 190 Iowa 1376, 179 N.W. 818 (1920); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923).

**86.2(4) Supplemental return—deferred interest.** When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation.

**86.2(5) Amended return.** If additional assets or errors in valuation of assets or deductible liabilities are discovered after the filing of the inheritance tax return increasing the amount of tax due, an amended inheritance tax return must be filed with the department, reporting the additional assets. The appropriate penalty and interest will be charged on the additional tax due pursuant to Iowa Code section 421.27 and department rules in 701—Chapter 10. To file an amended inheritance tax return, Form IA 706 shall be completed and at the top of the front page of the return the word “AMENDED” shall be printed. If additional liabilities are discovered or incurred after the filing of the inheritance tax return which result in an overpayment of tax, an amended inheritance tax return must be filed in the manner indicated above. For amended returns resulting from federal audit adjustments—see subrule 86.3(6) and rules 86.9(450), and 86.12(450). For permitted and amended returns not permitted for change of values—see subrule 86.9(4).

**86.2(6) Due date for filing—return on present property interests.** Unless an extension of time has been granted, the final inheritance tax return, or the inheritance tax return in case of decedents dying on or after July 1, 1983, must be filed and any tax due paid, for all property in present possession or enjoyment:

*a.* On or before the last day of the ninth month after death for estates of decedents dying on or after July 1, 1984, subject to the due date falling on a Saturday, Sunday, or legal holiday, which would then make the return due on the following business day. The following table for return due dates illustrates this subrule:

Deaths Occurring During:	Return Due Date:
July 1996	April 30, 1997
August 1996	June 2, 1997 (May 31 is a Saturday and June 1 is a Sunday)
September 1996	June 30, 1997
October 1996	July 31, 1997
November 1996	September 2, 1997 (August 31 is a Sunday, September 1 is Labor Day)
December 1996	September 30, 1997
January 1997	October 31, 1997
February 1997	December 1, 1997 (November 30 is a Sunday)

March 1997	December 31, 1997
April 1997	February 2, 1998 (January 31 is a Saturday and February 1 is a Sunday)
May 1997	March 2, 1998 (February 28 is a Saturday and March 1 is a Sunday)
June 1997	March 31, 1998

*b.* Within nine months after death for estates of decedents dying during the period beginning July 1, 1981, and ending June 30, 1984.

**86.2(7)** *Election to file—before termination of prior estate.* The tax due on a future property interest may be paid, at the taxpayer's election, on the present value of the future interest as follows:

*a.* *On or before the last day of the ninth month after the decedent's death (or within one year after the death of the decedent for estates of decedents dying prior to July 1, 1981).* Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date of the decedent's death. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date of the decedent's death that must be used.

*b.* *After the last day of the ninth month following the decedent's death (one year after death for estates of decedents dying prior to July 1, 1981) but prior to the termination of the prior estate.* Compute the tax by applying the life estate, annuity, or present value tables to the value of the property at the date the tax is paid. If age or time is a determining factor in computing the present value of the future interest, it is the age or time at the date the tax is paid that must be used. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950); *In re Estate of Millard*, 251 Iowa 1282, 105 N.W.2d 95 (1960). *In re Estate of Dwight E. Clapp*, Clay County District Court, Probate No. 7251 (1980).

**86.2(8)** *Mandatory due date—return on a future property interest.*

*a.* *For estates of decedents dying prior to July 1, 1984.* Rescinded IAB 10/13/93, effective 11/17/93.

*b.* *Mandatory due date—return on a future property interest for estates of decedents dying on or after July 1, 1981.* Unless the tax due on a future property interest has been paid under the provisions of subrule 86.2(7), paragraphs "a" and "b," the tax due must be paid on or before the last day of the ninth month following the termination of the prior estate. The statute does not provide for an extension of the mandatory due date for payment of the tax.

**86.2(9)** *Extension of time—return and payment.* For estates of decedents dying on or after July 1, 1984, the department may grant an extension of time to file an inheritance tax return on an annual basis. To be eligible for an extension, an application for an extension of time must be filed with the department on a form prescribed or approved by the director. The application for extension must be filed with the department prior to the time the tax is due and an estimated payment of 90 percent of the tax due must accompany the application—see Iowa Code section 421.27 and rule 701—10.85(422). An extension of time to pay the tax due may be granted in the case of hardship. However, for extensions to be granted, the request must include evidence of the hardship—see 701—Chapter 10. An extension of time to file cannot be extended for a period of time longer than ten years after the last day of the month in which the death of the decedent occurs.

**86.2(10)** *Discount.* There is no discount allowed for early payment of the tax due.

**86.2(11)** *Penalties.* See rule 701—10.6(421) for the calculation of penalty for deaths occurring on or after January 1, 1991.

**86.2(12)** *Interest on tax due.* All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the inheritance tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for

a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

This rule is intended to implement Iowa Code sections 421.14, 450.4, 450.5, 450.6, 450.9, 450.22, 450.44, 450.46, 450.47, 450.51, 450.52, 450.53, 450.63, and 450.94 and 2004 Iowa Acts, chapter 1073, and 2005 Iowa Acts, chapter 14.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

#### **701—86.3(450) Audits, assessments and refunds.**

**86.3(1) Audits.** Upon filing of the inheritance tax return, the department must audit and examine it and determine the correct tax due. A copy of the federal estate tax return must be filed with the inheritance tax return in those estates where federal law requires the filing of a federal estate tax return. The department may request the submission of wills, trust instruments, contracts of sale, deeds, appraisals, and such other information as may reasonably be necessary to establish the correct tax due. See Iowa Code sections 450.66 and 450.67 and *Tiffany v. County Board of Review*, 188 N.W.2d 343, 349 (Iowa 1971). For taxpayers using an electronic data interchange process or technology also see 701—subrule 11.4(4). The person or persons liable for the payment of the tax imposed by Iowa Code chapter 450 shall keep the records relating to the gross and net estate required for federal estate tax purposes under 26 U.S.C. Section 6001 of the Internal Revenue Code and federal regulation Section 20.6001-1.

**86.3(2) Assessments for additional tax.** The taxpayer must file an inheritance tax return on forms prescribed by the director on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department must notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the last day of the following month. For estates with decedents dying on or after July 1, 1999, the date of the notice and not the postmark date is controlling. If the inheritance tax return is not filed within the time prescribed by law, taking into consideration any extensions of time, or the return as filed is not correct, the department may make an assessment for the tax and any penalty and interest due based on the inventories, wills, trust instruments, and other information necessary to ascertain the correct tax. For interest and penalty rate information, see 701—Chapter 10.

**86.3(3) Refunds.** If the examination and audit of the inheritance tax return discloses an overpayment of tax, the department will refund the excess to the taxpayer. See 701—Chapter 10 for the statutory interest rate commencing on or after January 1, 1982. For estates of decedents dying prior to January 1, 1988, interest shall be computed for a period beginning 60 days from the date of the payment to be refunded. For estates of decedents dying on or after January 1, 1988, interest must be computed for a period beginning the first day of the second calendar month following the date of payment, or the date upon which the return which sets out the refunded payment was actually filed, or the date that return was due to be filed, whichever date is the latest. For the purposes of computing the period, each fraction of a month counts as an entire month. If the taxpayer, after the tax has been paid, discovers additional liabilities which, when offset by any additional assets results in an overpayment of the tax, the excess payment will be refunded to the taxpayer upon filing with the department an amended inheritance tax return claiming a refund. No refund for excessive tax paid shall be made by the department unless an amended return is filed with the department within three years (five years for estates of decedents dying prior to July 1, 1984) after the tax payment upon which the claim is made became due, or one year after the tax was paid, whichever time is the later—see Iowa Code section 450.94(3).

**86.3(4) Supplemental assessments and refund adjustments.** The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

**86.3(5) Assessments—period of limitations.** Effective for estates of decedents dying on or after July 1, 1984, assessments for additional tax due must be made within the following periods of time:

*a.* Within three years after the return is filed for property reported to the department on the return. The three-year period of limitation does not begin until the return is filed. The time of the decedent's death is not relevant. For purposes of determining the period of limitations, the assessment period shall terminate on the same day of the month three years later which corresponds to the day and month the return was filed. If there is no numerically corresponding day three years after the return is filed, or if the expiration date falls on a Saturday, Sunday, or legal holiday, the assessment period expires the preceding day in case there is no corresponding day, or the next day following which is not a Saturday, Sunday, or legal holiday.

*b.* The period of time for making an assessment for additional tax is unlimited if a return is not filed with the department.

*c.* If a return is filed with the department, but property which is subject to taxation is omitted from the return, the three-year period for making an assessment for additional tax on the omitted property does not begin until the omitted property is reported to the department on an amended return. The omission of property from the return only extends the period of limitations for making an assessment for additional tax against the beneficiary, surviving joint tenant, or transferee whose share is increased by the omitted property. Other shares of the estate are not affected by the extended assessment period due to the omitted property. The inheritance tax is a separate succession tax on each share of the estate, not on the estate as a whole. *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906).

**86.3(6) Period of limitations—federal audits.**

*a. Statute of limitations and federal audits in general.* In the case of a federal audit, the department, notwithstanding the normal three-year audit period specified in Iowa Code paragraphs 450.94(5) “a” and “b,” shall have an additional six-month period for examination of the inheritance tax return to determine the correct tax due and for making an assessment for additional tax that may be due.

The additional six-month period begins on the date the taxpayer performs two affirmative acts: (1) notifies the department, and the department receives such a notification, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (2) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document concerning the concluded controversy. The additional six-month examination period does not begin until both of the acts are performed. See Iowa Code sections 622.105 and 622.106 for the mailing date as constituting the filing date and Iowa Code section 4.1(34) and *Emmetsburg Ready Mix Co. v. Norris*, 362 N.W.2d 498 (Iowa 1985) when the due date falls on a legal holiday.

*b. Statute of limitations regarding federal audits involving real estate.*

(1) In general. Effective for estates with decedents dying on or after July 1, 1999, in addition to the period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the Internal Revenue Service for federal estate tax purposes. The department shall have an additional six months to make an examination and adjustment for the value of the real property.

(2) Beginning of the additional six-month period. The additional six-month period for assessment and adjustment begins on the date the taxpayer performs two affirmative acts: (a) notifies the department, in writing, that all controversies with the Internal Revenue Service concerning the federal estate, gift, and generation skipping transfer taxes have been concluded and (b) submits to the department a copy of the federal audit, closing statement, court decision, or any other relevant federal document. Such documents must indicate the final federal determination and final audit adjustments of all real property.

(3) Adjustment required. The department must make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether any of the following have occurred: an inheritance tax clearance has been issued; an appraisal has been obtained on the real property indicating a contrary value; there has been an acceptance of another value for real property by the department; an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property.

(4) Refunds. Despite the time period for refunds set forth in Iowa Code section 450.94(3), the personal representative for the estate has six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the Internal Revenue Service to claim a refund from the department of an overpayment of tax due to the change in the valuation of real property by the Internal Revenue Service.

*c. Effect of additional time periods.* The additional six-month audit period set forth in “a” and “b” under this subrule does not limit or shorten the normal three-year examination period. As a result, a six-month additional examination period has no application if the additional six-month examination period would expire during the normal three-year audit period. If additional tax is found to be due, see paragraph 86.12(5)“b” for the inheritance tax lien filing requirements for securing the additional tax after an inheritance tax clearance has been issued. The six-month additional examination period means the department shall have at least six months to examine the return after the notification. The department will have more time if the normal three-year examination period expires after the six-month additional period for examination. After the expiration of the normal three-year examination period, and absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments for real property is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax laws that incorporate Internal Revenue Code provisions. See Iowa Code section 450.94(5), 701—86.9(450) and 701—86.12(450), and *Kelly-Springfield Tire Co. v. Iowa Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

This rule is intended to implement Iowa Code sections 422.25 and 422.30; section 450.37 as amended by 1999 Iowa Acts, chapter 151, section 47; and Iowa Code sections 450.53, 450.65, 450.71, 450.94, 450A.12 and 451.12.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—86.4(450) Appeals.** A determination made by the department of either the correct amount of the tax due, or the amount of refund for excessive tax paid, shall be final unless the taxpayer, or any other party aggrieved by the determination, appeals to the director for a revision of the department’s determination. For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely filed if filed no later than 60 days following the date of assessment notice or, if a taxpayer failed to timely appeal a notice of assessment, the taxpayer may make a payment pursuant to rule 701—7.8(17A) and file a refund claim within the period provided by law for filing such claims. In the event of an appeal, the provisions of 701—Chapter 7 of the department’s rules of practice and procedure before the department of revenue and Iowa Code chapter 17A shall apply.

This rule is intended to implement Iowa Code chapter 17A and section 450.94.

**701—86.5(450) Gross estate.**

**86.5(1) Iowa real and tangible personal property.** Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent

may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *In re English's Estate*, 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

**86.5(2) Foreign real estate and tangible personal property.** Real estate and tangible personal property with a situs outside the state of Iowa are not subject to the Iowa inheritance tax and, therefore, are not includable in the decedent's gross estate for tax purposes. *Frick v. Pennsylvania*, 268 U.S. 473, 45 S. Ct. 603, 69 L.Ed. 1058 (1925); *In re Marx Estate*, 226 Iowa 1260, 286 N.W.2d 422 (1939).

**86.5(3) Intangible personal property—decedent domiciled in Iowa.** Intangible personal property, or interest therein, owned by a decedent domiciled in Iowa is includable in the gross estate for inheritance tax purposes regardless of the physical location of the evidence of the property or whether the account or obligation is with a non-Iowa financial institution. *Curry v. McCanness*, 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed. 1339 (1939); *Lincoln's Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

**86.5(4) Intangible personal property—decedent domiciled outside Iowa.** Intangible personal property may have more than one inheritance tax situs and be subject to multiple state inheritance taxation. Therefore, it has been held that the situs of intangible personal property is the place where the owner is domiciled and also where the intangible has acquired a business situs or is located for state inheritance tax purposes. More than one state can subject the succession to such intangible property to tax. *State Tax Commission of Utah v. Aldrich*, 316 U.S. 174, 62 S. Ct. 1008, 86 L.Ed. 1358 (1942); *Curry v. McCanness*, 307 U.S. 357, 59 S. Ct. 900, 83 L.Ed. 1339 (1939); *Chaffin v. Johnson*, 200 Iowa 89, 204 N.W. 424 (1925). Intangible personal property owned by a decedent domiciled outside Iowa may be subject to the Iowa inheritance tax and, therefore, includable in the gross estate if the physical evidence of the property has an Iowa situs or if the intangible property is an account or obligation of an Iowa financial institution. This intangible personal property is not subject to Iowa inheritance tax if the state of domicile subjects the property to a state death tax and either does not subject intangible personal property owned by a decedent domiciled in Iowa to a state death tax, or grants reciprocity to Iowa-domiciled decedents on like intangible personal property. Intangible personal property owned by a decedent domiciled outside Iowa is subject to the Iowa inheritance tax if the state of domicile does not grant an exemption or reciprocity to like intangible personal property owned by Iowa decedents, or does not impose a death tax on intangible property.

**86.5(5) Classification of property.** The property law of the state of situs determines whether property is classified as real, personal, tangible or intangible and also whether decedent had an interest in the property. *Dieleman's Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *Williamson v. Youngs*, 200 Iowa 672, 203 N.W. 28 (1925).

**86.5(6) Insurance—in general.** Whether the proceeds or value of insurance is includable in the gross estate for inheritance tax purposes depends on the particular facts in each situation. Designated beneficiary and type of insurance (life, accident, health, credit life, etc.) are some of the factors that are considered in determining whether the value or proceeds are subject to tax. *In re Estate of Brown*, 205 N.W.2d 925 (Iowa 1973).

*a. Insurance proceeds subject to tax.* The proceeds of insurance on the decedent's life owned by the decedent and payable to the decedent's estate or personal representative is includable in the gross estate. Insurance owned by the decedent on the life of another is includable in the gross estate to the extent of the cash surrender value of the policy. The proceeds of all insurance to which the decedent had an interest, at or prior to death, but are payable for reasons other than death, are includable in the gross estate. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977).

*b. Insurance proceeds not taxable.* Insurance on the decedent's life payable to a named beneficiary, including a testamentary trust, other than the insured, the estate, or the insured's personal representative, is not subject to Iowa inheritance tax. *In re Estate of Brown*, 205 N.W.2d 925 (Iowa 1973).

*c. Insurance proceeds includable—depending on circumstances.* Credit life insurance and burial insurance are offsets against the obligation. If the obligation is deducted in full or in part in computing the taxable shares of heirs or beneficiaries, the proceeds of the credit life and burial insurance are includable in the gross estate to the extent of the obligation. Insurance on the decedent's life and owned by the

decedent, pledged as security for a debt is an offset against the debt if the insurance is the primary source relied upon by the creditor for the repayment of the obligation and is includable in the gross estate on the same conditions as credit life insurance. See *Estate of Carl M. Laartz* Probate No. 9641, District Court of Cass County, March 17, 1973; *Estate of Roy P. Petersen*, Probate No. 14025, District Court of Cerro Gordo County, May 16, 1974.

Insurance on the decedent's life, payable to a corporation or association in which the decedent had an ownership interest, while not subject to tax as insurance, may increase the value of the decedent's interest. *In re Reed's Estate*, 243 N.Y. 199, 153 N.E.47, 47 A.L.R. 522 (1926).

**86.5(7)** *Gifts in contemplation of death—for estates of decedents dying prior to July 1, 1984, only.* A transfer of property, or interests in property by a decedent, except in the case of a bona fide sale for fair consideration within three years of the grantor's death, made in contemplation of death, is includable in the decedent's gross estate. Any such transfer made within the three-year period prior to the grantor's death is presumed to be in contemplation of death, unless it is shown to the contrary. Whether a transfer is made in contemplation of death depends on the intention of the grantor in making the transfer and will depend on the facts and circumstances of each individual transfer.

*a. Factors to be considered include, but are not limited to:*

- (1) The age and health of the grantor at the time of the transfer,
- (2) Whether the grantor was motivated by living or death motives,
- (3) Whether or not the gift was a material part of the decedent's property,
- (4) Whether the gift was an isolated event or one of a series of gifts during the decedent's lifetime.

*b. Factors which tend to establish that the motive for the gift was prompted by the thought of death include, but are not limited to:*

- (1) Made with the purpose of avoiding death taxes,
- (2) Made as a substitute for a testamentary disposition of the property,
- (3) Of such an amount that the remaining property of the grantor would not normally be sufficient to provide for the remaining years of the grantor and those of the grantor's household,
- (4) Made with the knowledge that the grantor is suffering from a serious illness that is normally associated with a shortened life expectancy.

*c. Factors which tend to establish that the gift was inspired by living motives include, but are not limited to:*

- (1) Made on an occasion and in an appropriate amount that is usually associated with such gift giving occasions as Christmas, birthdays, marriage, or graduation,
- (2) Made because of the financial need of the donee and in an amount that is appropriate to the need,
- (3) Made as a remembrance or reward for past services or favors in an amount appropriate to the occasion,
- (4) Made to be relieved of the burden of management of the property given, retaining sufficient property and income for adequate support and maintenance.

For a gift to be determined to have been made in contemplation of death it is not necessary that the grantor be conscious of imminent or immediate death. However, the term means more than the general expectation of death which all entertain. It is a gift when the grantor is influenced to do so by such expectation of death, arising from bodily or mental condition, as prompts persons to dispose of their property to those whom they deem the proper object of their bounty. It is sufficient if the thought of death is the impelling cause for the gift. *U.S. v. Wells*, 283 U. S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931); *In re Mann's Estate*, 219 Iowa 597, 258 N.W. 904 (1935).

*d. Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984.* All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional

gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, 1995. The three-year period during which gifts may be subject to inheritance tax begins July 1, 1992. During the calendar year 1992, A made a cash gift to nephew B of \$11,000 on May 1, 1992, and a second gift to B of \$4,000 on August 1, 1992. In this example, none of the \$11,000 gift made on May 1, 1992, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the \$4,000 gift made on August 1, 1992, is includable for inheritance tax purposes because it is in excess of the calendar year 1992 federal gift tax exclusion of \$10,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual exclusion (\$10,000 for 1994) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of \$2,000 per acre, or \$320,000. On August 1, 1994, A released the retained life estate without any

consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen*, 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, 1992, loaned brother B \$450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, 1994, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner*, 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of \$40,500 through August 1993 (one year after the note was executed) and an additional gift of \$40,500 through August 1, 1994, and two months' interest of \$6,750 from August 1, 1994, to the date of death on October 1, 1994. Therefore, in calendar year 1992 A has made a gift of 5/12 of \$40,500, or \$16,875. After deducting the annual calendar year exclusion of \$10,000, \$6,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year 1993, \$40,500, less the \$10,000 exclusion, or \$30,500, is subject to inheritance tax. For calendar year 1994 the loan was outstanding for nine months. Three-fourths of \$40,500, less \$10,000, or \$20,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, 1992, A sold a 160-acre Iowa farm to niece B for \$1,500 per acre, or \$240,000. On the date of sale, the fair market value of the farm was \$2,500 per acre, or \$400,000. A died on August 1, 1994. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is 38 percent, not 40 percent, because the \$10,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, 1992, A sold a 160-acre Iowa farm to niece B for \$2,500 per acre, or \$400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are \$34,873.82 per year. A died on August 1, 1994. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of \$34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

The present value of the future annual payments of \$34,873.82 for 20 years to reflect a 12 percent return on an investment is \$260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay \$260,488.05 for this 6 percent \$400,000 contract of sale.

Bona Fide Sale Percentage

Present value:  $\frac{260,488.05}{400,000.00} = 65\%$

Sale price: 400,000.00

This is the percentage of the sale price of \$400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of \$400,000 - \$260,488.05 or \$139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the \$10,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\frac{\$139,511.95 - \$10,000}{400,000.00} = \frac{129,511.95}{400,000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the \$10,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

**86.5(8) Joint tenancy property—in general.** Whether the form of ownership of property is considered to be joint tenancy is determined by the property law of the state of the situs of the property. Generally, the words and phrases “to A and B as joint tenants with full rights of survivorship and not as tenants in common” create a joint tenancy form of ownership unless a contrary interest can be shown by material evidence. “To A or B, payable to the order of self” creates an alternative right of ownership and for tax purposes is treated as joint tenancy property. *In re Estate of Martin*, 261 Iowa 630, 155 N.W.2d 401 (1968); *Petersen v. Carstensen*, 249 N.W.2d 622 (Iowa 1977); *In re Estate of Loudon*, 249 Iowa 1393, 92 N.W.2d 409 (1958). Joint tenancy property may be held by more than two persons. *In re Estate of Horner*, 234 Iowa 624, 12 N.W.2d 166 (1944). However, the use of the words “as joint tenants” alone without the use of the phrase “with right of survivorship” may only create a tenancy in common. *Albright v. Winey*, 226 Iowa 222, 284 N.W. 86 (1939).

*a. Joint tenancy property—husband and wife alone.* Generally there are no shares in joint tenancy property because each joint tenant owns the whole property. As a result, joint tenancy property is not taxed like tenancy in common property where each owner has a specific share. If the joint tenancy property is held by husband and wife alone, only one-half of the property is includable in the gross estate for inheritance tax purposes in the estate of the first joint tenant to die. However, if the survivor can establish by competent evidence that separate money or property was used and contributed to a larger percentage than one-half to the acquisition of a specific item or items of jointly held property, then the larger percentage of such item or items shall be excluded from taxation. *Ida M. Jepsen v. Bair*, No. 85, State Board of Tax Review, June 18, 1975.

*b. Joint tenancy property—not held by husband and wife alone.* Property held in this form of joint tenancy is includable in the gross estate of the deceased joint tenant, except to the extent the surviving joint tenant or tenants can establish contribution to the acquisition of the joint property, in which case the proportion attributed to the contribution is excluded from the gross estate. In the case of multiple joint tenancy property, excess contribution established by one surviving joint tenant cannot be attributed to another surviving joint tenant. For tax purposes, the requirement of contribution in effect

establishes percentage ownership—or shares—in jointly held property that does not exist in property law. Contribution to the acquisition of jointly held property can be established by the survivor by proof, which includes, but is not limited to, evidence that the property was acquired by gift, inheritance, or purchase from the survivor's separate funds or property. Contribution means cash or cash in kind that is applied to the cost of obtaining the property at issue. Unlike joint tenancy property held solely between husband and wife, if any of the surviving joint tenants is not the spouse of the decedent, the presumed one-half exclusion is not automatically available without proof of contribution.

*c. Joint tenancy—convenience or constructive trust.* If the record ownership of bank accounts, certificates of deposit, and other kinds of property are held in the form of joint tenancy, but in fact are held by the decedent and another person or persons who have a confidential or fiduciary relationship with the decedent, the property is not held in joint tenancy but is held in constructive or resulting trust by the survivor for the decedent. A confidential or fiduciary relationship is any relationship existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in one's important affairs. *First National Bank v. Curran*, 206 N.W.2d 317 (Iowa 1973). The fact that the decedent furnished the funds to acquire the property or demonstrated a kind, considerate, and affectionate regard for the survivor does not in itself establish a confidential relationship between the decedent and the survivor. If the evidence to establish a contrary relationship with respect to property in the form of joint tenancy is not substantial, a joint tenancy exists as a matter of law. *Petersen v. Carstensen*, 249 N.W.2d 622 (Iowa 1977).

If a confidential relationship constituting a constructive or resulting trust is established on behalf of the decedent, the property or property interest that is the subject of the trust is part of the decedent's gross estate as singly owned property.

**86.5(9) Transfers reserving a life income or interest.** If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English*, 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate*, 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the \$10,000 gift exclusion.

**86.5(10) Powers of appointment—in general.** Iowa Code section 450.3(4) is concerned with two aspects of powers of appointment that are subject to inheritance tax. First, the taxation of the decedent's property subject to the power of appointment in the estate of the donor (decedent), and second, the exercise, or nonexercise, of the power of appointment over the property in the estate of the donee (the decedent possessing the power).

*a. General power of appointment.* Whether the instrument of transfer utilized by the donor creates a general or special power of appointment is a matter of property law. For example, a devise to A for

life with “power to dispose of and pass clear title ... if A so elects,” creates a life estate with a general power of appointment. *In re Estate of Cooksey*, 203 Iowa 754, 208 N.W. 337 (1927). Also to A for life, “Especially giving unto A the right to use and dispose of the same as A may see fit,” creates a general power of appointment, *Volz v. Kaemmerle*, 211 Iowa 995, 234 N.W. 805 (1931). However, the power to sell and convert the assets subject to the power does not in itself create a general power of appointment. *In re Estate of Harris*, 237 Iowa 613, 23 N.W.2d 445 (1946). A power is general if being testamentary, it can be exercised wholly in favor of the estate of the donee. *In re Estate of Spencer*, 232 N.W.2d 491 at 495, 496 (Iowa 1975). The definition of a general power of appointment contained in 26 U.S.C. Section 2056(b)(5) of the Internal Revenue Code would meet the test of a general power under Iowa law.

*b. Special power of appointment.* If there is a limitation on the donee’s right to use the corpus only for care, maintenance and support, the power is special, not general. *Brown v. Brown*, 213 Iowa 998, 240 N.W. 910 (1932). Also, to A for life with power to handle the property for A’s interest, limits the power of invasion of the principal for care and support only, and is therefore a special, not a general, power of appointment. *Lourien v. Fitzgerald*, 242 Iowa 1258, 49 N.W.2d 845 (1951). Also, to A for life, with unrestricted power of sale with no power over the sale proceeds creates only a special power of appointment in the donee. *McCarthy v. McCarthy*, 178 N.W.2d 308 (Iowa 1970).

If the donee’s power to appoint is limited to a class or group of persons, a special, not a general, power is created. *In re Estate of Spencer*, 232 N.W.2d 491, at 496 (Iowa 1975).

*c. Powers of appointment—taxation in donor’s estate.* If the instrument in the donor’s estate creates a general power of appointment, the property subject to the power is taxed as if the property had been transferred to the donee in fee simple. Those who would succeed to the property in the event the power is not exercised are treated in the donor’s estate as if they receive no interest in the property, even though in property law those who succeed to the property either by the exercise, or nonexercise, take from the donor of the power. *In re Estate of Higgins*, 194 Iowa 369 at 373, 189 N.W. 752 (1922); *Bussing v. Hough*, 237 Iowa 194 at 200, 21 N.W.2d 587 (1946).

If the instrument in the donor’s estate creates a special power of appointment, the property subject to the power is taxed as if the donee of the power had received a life estate or term for years, as the case may be. Those persons who would take the property in the event the special power is not exercised are taxed in the donor’s estate as if they had received the remainder interest in the property subject to the special power, although an election to defer payment of the tax may result in either no tax or a different tax obligation. This could happen, for example, if the special power is the power to invade the corpus for the health, education, and maintenance of the donee.

*d. Powers of appointment in the estate of a donee dying on or after January 1, 1988.* Property which is subject to a general power of appointment is includable for inheritance tax purposes in the gross estate of a donee dying on or after January 1, 1988, if the donee has possession of the general power of appointment at the time of the donee’s death, or if the donee has released or exercised the general power of appointment within three years of death. Whether or not the donee of a general power exercises the general power at death is not relevant to the includability of the property subject to the general power in the estate of the donee. The mere possession of the power at death is sufficient for the property subject to the power to be included in the estate of the donee for inheritance tax purposes.

Property subject to a special power of appointment is not includable in the gross estate of the donee of the power regardless of whether the donee possesses the special power or exercised the power at death, unless a QTIP election was made under Iowa Code subsection 450.3(7) in which case the rule governing QTIP elections shall control. See paragraphs 86.5(10) “a” and “b” for the distinction between a general and special power and subrule 86.5(11) for the rule governing QTIP elections.

For inheritance tax purposes, if there is an exercise or release of the general power within three years of the donee’s death, the property subject to the exercise or release is includable in the donee’s estate just as if the donee had retained possession of the power at death and is taxable to those to whom the property is appointed in case the power is exercised, or to those who take in default of the exercise in case the power is released.

The general power of appointment is considered to have been exercised for the purposes of this rule when the nature of the disposition is such that if it were a transfer or disposition of the donee’s property,

the transfer would be subject to inheritance tax under Iowa Code section 450.3. The power is considered exercised in the following three nonexclusive classes of cases: (1) where there has been some reference in the will or other instrument to the power; (2) the will or other instrument contains a reference to the property which is the subject on which the power is to be executed; (3) where the provision in the will or other instrument executed by the donee of the power would otherwise be ineffectual or a mere nullity; in other words, the provision would have no operation except as an execution of the power. *In re Trust of Stork*, 233 Iowa 413, 421, 9 N.W.2d 273 (1943). For the purposes of section 450.3(4), a release of a general power is considered to be a transfer of the property subject to the power to those who would take in default if the power was not exercised.

**86.5(11) Qualified terminable interest property (QTIP).**

*a. In general.* Effective for estates of decedents dying on or after July 1, 1985, property passing from the decedent grantor-donor, which qualifies as qualified terminable interest property (QTIP) within the meaning of 26 U.S.C. Section 2056(b)(7)(B) is eligible to be treated for Iowa inheritance tax purposes, if an election is made, as passing in fee to the donee-grantee surviving spouse, in the estate of the grantor-donor decedent, subject to the provisions of law and this subrule. If the election is made, the qualified property, unless it is disposed of prior to death, shall be included in the gross estate of the surviving spouse and treated as passing in fee to those succeeding to the remainder interest in the qualified property.

*b. Property transfers eligible.* Five factors are relevant in determining whether property passing from a decedent grantor-donor is eligible for the Iowa qualified terminable interest election. They are: (1) the death of the decedent-transferor, but not necessarily the transfer, must have occurred on or after July 1, 1985; (2) the property must meet the qualifications required in 26 U.S.C. Section 2056(b)(7)(B), or in the case of a gift within three years prior to the decedent-transferor's death, the qualifications in 26 U.S.C. Section 2523(f); (3) a valid federal election must have been made on a required federal return with respect to the qualified property for federal estate tax purposes or, for federal gift tax purposes, if the transfer occurred within three years prior to the transferor's death; and (4) the property must be included in the decedent-transferor's gross estate for Iowa inheritance tax purposes, either because the transfer occurred at death or within three years prior to the transferor's death; and (5) Iowa must have constitutional nexus with the surviving spouse or QTIP property.

If property is not eligible for an Iowa qualified terminable interest election, or if eligible, but an Iowa election is not made, it is not included in the estate of the surviving spouse grantee-donee for inheritance tax purposes by reason of Iowa Code section 450.3. The fact that the qualified property is included in the estate of the surviving spouse for federal estate tax purposes does not necessarily mean the property is automatically included in the surviving spouse's Iowa gross estate.

The treatment of the qualified property in both the grantor-donor's and the surviving spouse's estates for Iowa inheritance tax purposes is determined by the Iowa election, or lack of an election, being made in the grantor-donor's estate.

This subrule is illustrated by the following examples:

**EXAMPLE 1.** Decedent A died testate, a resident of Iowa, July 2, 1995, leaving a surviving spouse, B, and two children, C and D. On February 1, 1992, A transferred by deed a 160-acre Iowa farm to spouse B for life, with the remainder at B's death to two children, C and D. An election was made under 26 U.S.C. Section 2523(f) to treat the gift of the 160-acre farm as passing entirely to B in fee.

Upon A's death the 160-acre farm is not part of A's gross estate either for federal estate or for Iowa inheritance tax purposes because the transfer was made more than three years prior to death. However, upon the death of B, the surviving spouse, the 160 acres is included in B's gross estate (unless disposed of prior to death) for federal estate tax purposes, but is not included in B's Iowa gross estate. The transfer by A took place more than three years prior to death, and therefore is not included in A's Iowa estate and is not eligible for an Iowa qualified terminable interest election.

**EXAMPLE 2.** On October 1, 1992, grantor A executed a revocable inter vivos trust which consisted of cash and a 160-acre Iowa farm. Under the terms of the trust agreement A was to receive the trust income for life and upon A's death the trustee was to pay the trust income to A's spouse, B, for life, with the power to invade the principal for B's care and support. Upon B's death the trust was to terminate and

the balance of the corpus was to be paid to A's children, C and D. A died July 2, 1995, and the personal representative elected to treat the trust assets as passing entirely in fee to the surviving spouse, B, for federal estate tax purposes. An Iowa qualified terminable interest election was not made. In this fact situation, the election qualified the trust assets for the marital deduction for federal estate tax purposes. For Iowa inheritance tax purposes, since an Iowa election was not made, the trust assets are taxed on the basis of a life estate passing to B, the surviving spouse, and the remainder passing to the children, C and D. Upon B's death, the trust corpus will be included in B's estate for federal estate tax purposes, but not in B's estate for Iowa inheritance tax purposes, because an Iowa qualified terminable interest election was not made in A's estate.

*c. The qualified terminable interest election—in general.* The election to treat qualified terminable interest property as passing entirely in fee to the surviving spouse in the estate of the decedent grantor-donor is an affirmative act. In the event an election is not made, the qualified property will be treated as a life estate passing to the surviving spouse with a remainder over as provided in Iowa Code section 450.3(4).

An Iowa election cannot be made unless an election has been made on the same qualified property for federal estate tax purposes on a required federal return, or in case of a gift made within three years of the decedent grantor-donor's death, for federal gift tax purposes. However, even though a federal election has been made, the personal representative of the decedent grantor-donor's estate has the option to either make or not to make the election with respect to the qualified property for Iowa inheritance tax purposes. It is sufficient for Iowa inheritance tax purposes that a valid federal election has been made. What constitutes a valid election for federal estate or gift tax purpose is determined under applicable federal law and practice and not by the department.

However, it is permissible for Iowa inheritance tax purposes to make an election for a smaller but not larger percentage of the qualified property than was made for federal estate or gift tax purposes. These general principles can be illustrated by the following examples:

EXAMPLE 1. Decedent-grantor A created a revocable inter vivos trust on October 15, 1992, which was funded by \$200,000 in cash and a 160-acre Iowa farm worth \$200,000. The trust provided that the trustee pay the income to A for life and upon A's death, the trustee was to pay the income to A's surviving spouse B for life, with power to invade the principal for B's care and support. Upon B's death the trust was to terminate and the balance of the principal was to be distributed to A's two children, C and D.

A died on July 2, 1995, and the principal of the trust is included in A's gross estate both for federal estate and Iowa inheritance tax purposes because the trust was revocable and A retained the income for life. A's personal representative elected to treat 50 percent of the trust assets as qualified terminable interest property for federal estate tax purposes. A's personal representative elected not to treat the qualified property as passing to B for Iowa inheritance tax purposes. This is permissible because the personal representative has the option to either elect or not to elect to treat 50 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes.

EXAMPLE 2. Same factual situation as Example 1. A's personal representative elects to treat only 25 percent of the qualified property as passing in fee to the surviving spouse for Iowa inheritance tax purposes. This is permissible because the personal representative is not required to make an election on all of the qualified terminable interest property on which the federal election has been made. It is sufficient that a federal election has been made for at least as large a percentage of the qualified property on which the Iowa election is made. However, an Iowa election cannot be made for a larger percentage of the qualified property than the percentage made on the federal election.

EXAMPLE 3. Same factual situation as Example 1. In this example, A's personal representative, for Iowa inheritance tax purposes, purports to elect to treat the \$200,000 cash in the trust as passing in fee to the surviving spouse, but not the 160-acre Iowa farm, which is also valued at \$200,000. Although the federal estate tax election is for 50 percent of the qualified property, the Iowa election is invalid even though it is made in respect to an asset which is equal in value to 50 percent of the trust principal. If the election is made for less than all of the qualified terminable interest property, the election must be for a fraction of all the qualified property. The personal representative is not permitted to select for the election some qualified assets and reject others. See Federal Estate Tax Regulation 20.2056-1(b).

*d. The election—manner and form.* The qualified terminable interest election shall be in writing and made by the personal representative of the decedent grantor-donor's estate on the Iowa inheritance tax return. The election once made shall be irrevocable. If the election is not made on the first inheritance tax return, the election may be made on an amended return, provided the amended return is filed on or before the due date of the return (taking into consideration any extensions of time granted to file the return and pay the tax due). The personal representative may make an election on a delinquent return, provided it is the first return filed for the estate. The filing for the purpose of protective election is not allowed. Failure to make the election on the first return filed after the due date has passed precludes making an election on a subsequent return. See 26 U.S.C. Section 2056(b)(7)(B)(V) and Internal Revenue Service Letter Ruling 8418005.

The election consists of two affirmative acts performed by the personal representative on the inheritance tax return: (1) by answering in the affirmative the question—Is the estate making a qualified terminable interest election with respect to the qualified property? and (2) by computing the share of the surviving spouse to include the qualified terminable interest property on which the election was made. In the event of an inconsistency in complying with the two requirements, the treatment given to the share of the surviving spouse shall be controlling.

*e. Disposition of qualified property prior to death.* A disposition of all or part of the qualified property, which was the subject of the qualified terminable interest election, prior to the death of the surviving spouse, voids the election as to that portion of the property disposed of that is not retained by the surviving spouse. In this event, the portion of the qualified property not retained by the surviving spouse shall be taxed to those succeeding to the remainder interests in the disposed property as if the tax on the remainder interest had been deferred under Iowa Code sections 450.44 to 450.49. Except in the case of special use valuation property, the tax shall be based on the fair market value of the amount of the qualified property not retained by the surviving spouse at the time the property was disposed of. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950), see subrule 86.11(5) for taxation of remainder interests when the tax is deferred. The alternate valuation date cannot be used in computing the tax. See subrule 86.10(2). If QTIP property has been valued at its special use value under Iowa Code chapter 450B, and is disposed of prior to the death of the surviving spouse, the portion of the QTIP property not retained by the surviving spouse shall be valued for taxation as follows:

1. At its special use value at the time of its disposition, if the QTIP property remains in qualified use under 26 U.S.C. Section 2032A.

2. At its fair market value at the time of its disposition, if there is a cessation of the qualified use under 26 U.S.C. Section 2032A. In case there is a cessation of the qualified use, the recapture tax provisions of Iowa Code section 450B.3 shall not apply. The tax on the remainder interest is treated as a payment of tax deferred and subject to the rules on deferred tax and not a recapture, with interest, of the tax originally imposed in the decedent grantor-donor's estate.

*f. Inclusion in the estate of the surviving spouse.* Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 86.9(450), or at its special use value under Iowa Code chapter 450B and rule 86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1) "b" and rule 86.10(450), if the property is otherwise eligible.

This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, 1997, survived by a spouse, B, aged 65, and two step-grandchildren, C and D. Under A's will all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between C and D, who are the grandchildren of surviving spouse B. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at \$250,000 and personal property valued at \$200,000.

<u>Tax on the basis of all property passing in fee to B</u>	
<u>Share</u>	<u>Tax</u>
\$450,000	\$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to C and D.

<u>Share</u>	<u>Tax</u>
Spouse B: Life estate factor .42226	
\$450,000 × .42226 = \$190,017	-0-
C's share ½ remainder factor .57774	
\$450,000 × .57774 ÷ 2 = \$129,991.50	\$15,498.73
D's share—same as C's share <u>\$129,991.50</u>	<u>\$15,498.73</u>
Total \$450,000.00	\$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would have cost the step-grandchildren, C and D, \$30,997.46 if the election had not been made.

EXAMPLE 3. B, the surviving spouse of A in Example 1, died testate, a resident of Iowa, on October 15, 1997. Under the terms of B's will, B's grandchildren, C and D, inherit B's entire estate in equal shares. B's net estate consists of \$200,000 in personal property and a 160-acre Iowa farm with a value of \$250,000 both of which were the subject of a qualified terminable interest election in A's estate and in which C and D own the remainder interest. B's net estate also consisted of \$100,000 in intangible personal property which B owned in fee simple.

B's net estate for Iowa inheritance tax purposes consists of the following:

\$200,000, personal property from A's estate.

\$250,000, 160-acre farm from A's estate.

\$100,000, owned by B in fee simple.

\$550,000 Total

The shares of C and D and their tax owed in B's estate are computed as follows:

<u>Share</u>	<u>Tax</u>
Beneficiary C: ½ of the net estate, or	
\$275,000	\$0
Beneficiary D: (same as C)	<u>\$0</u>
Totals	\$0

g. *The QTIP tax credit and the credit for tax on prior transfers.* The credit for the additional tax paid by the surviving spouse in the estate of the decedent grantor-donor on property, which was the subject of a qualified terminable interest election, is governed exclusively by the provisions of Iowa

Code section 450.3 and these rules. The credit for tax paid on prior transfers allowable under Iowa Code section 450.10(6) shall not apply. However, property received by the surviving spouse from the estate of the decedent grantor-donor, which was not the subject of a qualified terminable interest election, is eligible for the credit for the tax paid on a prior transfer, if the conditions of Iowa Code section 450.10(6) are otherwise met.

**86.5(12) Annuities.**

*a. General rule.* Annuities in general are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate*, 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation*, 350 Mass. 237, 214 N.E.2d 283 (1966).

*b. Exception to the general rule.* Iowa Code section 450.4(5) provides for an exception to the general rule of taxability of annuities. Essentially, an exemption from Iowa inheritance tax is allowed if the following three elements are met: (1) payment under the plan must be in installments; (2) the annuity payment, in whole or in part, must be included as net income for Iowa income tax purposes under Iowa Code section 422.7; and (3) the annuity must be derived from a qualifying employee's pension or retirement plan. In essence, the portions of payments received under a qualified annuity plan that are subject to Iowa income tax are exempt from Iowa inheritance tax and the portions of such payments that are not subject to Iowa income tax are subject to Iowa inheritance tax. The exclusion makes reference only to installment payments and not to lump-sum distributions to a beneficiary. It is within the exclusion, if the payments, or a portion, are subject to Iowa income tax irrespective of the type of income tax treatment given the payments. Whether the payments are includable as ordinary income or receive capital gain treatment is not material to determining the exclusion. Iowa Code section 450.4(5) purports to exclude from inheritance tax what is subject to income tax and Iowa Code section 422.7(4) purports to exclude from income tax what is subject to inheritance tax. The apparent ambiguity can be resolved by an analysis of Iowa Code section 422.7(4). Iowa Code section 422.7(4) excludes from income tax the commuted value of the installment payments, not just a portion of the payments. "Commuted value" has been defined as the sum necessary to provide future payments as provided for in an annuity policy. In other words, the present value of the full amount of each annuity payment is the commuted value. This can be construed to mean only those estates which had been taxed for inheritance tax purposes on the full amount of each installment payment are entitled to the income tax exclusion. Annuities typically known as "employee pensions" are generally considered to be qualified plans for exemption for inheritance tax purposes. The qualified plans receive special income tax treatment during the period the annuity is being funded. This special tax treatment is based on the income being deferred to fund the annuity plan and also the postponement of the earnings from the fund until withdrawal. Payment of the proceeds from the annuity must not be in the form of one lump sum. Instead, payment must be in installments to qualify for the inheritance tax exemption. To constitute an installment, there must be two or more payments of the proceeds from the annuity. There is not a set time period imposed between payments to qualify for exemption.

**EXAMPLE.** The decedent, a resident of Iowa, had a qualified annuity purchased under a retirement plan through the decedent's Iowa employer. The beneficiary of the pension is the decedent's niece who is a resident of Iowa. A portion of the installment payments received by the niece will be included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of installment payments included as net income. However, the remaining portion of the installment payments not reported as net income pursuant to Iowa Code section 422.7 or subject to Iowa income tax at its computed value would be subject to Iowa inheritance tax—see Iowa Code sections 422.7(4), 422.7(31), and 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, it is not relevant for the purpose of determining the taxable or exempt status of payments under a qualified plan that the decedent rolled over or changed the terms of payment prior to

death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death. A rollover of money in a qualified plan that occurs after the death of the decedent is treated as a lump-sum payment for the purposes of inheritance tax.

Effective July 1, 2001, the value of a portion of any lump-sum or installment payment received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan, which is to be included as net income under Iowa Code section 422.7, is exempt from Iowa inheritance tax.

**86.5(13) *Distribution of trust property.*** Property of a trust can be divided into two or more trusts, or one or more separate trusts can be consolidated with one or more other trusts into a single trust by dividing the property in cash or in kind, including in undivided interests, by pro-rata or non-pro-rata division or in any combination thereof. Division of property between trusts in this manner does not result in a "sale" of the divided property and a corresponding taxable gain.

**86.5(14) *Qualified tuition plans exempt.*** Effective for estates of decedents dying on or after July 1, 2008, in the event that the decedent was the sole plan participant in a qualified school tuition plan, as defined in Section 529 of the Internal Revenue Code; or in the event that a named co-plan participant does not have a lineal relationship to the named beneficiary of the qualified tuition plan, the value of the decedent's interest in the qualified tuition plan is not subject to Iowa inheritance tax and therefore is not includable in the decedent's gross estate for tax purposes. This provision applies only to qualified tuition plans in existence on or after July 1, 1998.

This rule is intended to implement Iowa Code sections 422.7(4), 450.2, 450.3, 450.4(5), 450.8, 450.12, 450.37, 450.91, 633.699, and 633.703A and Iowa Code Supplement section 450.4 as amended by 2008 Iowa Acts, House File 2673, section 2.

#### **701—86.6(450) The net estate.**

##### **86.6(1) *Liabilities deductible.***

*a. Debts owing by decedent.* A debt, to be allowed as a deduction in determining the net estate under Iowa Code section 450.12, must be the liability of the decedent and also be owing and not discharged at the time of the decedent's death. The amount allowable as a deduction is the principal amount due, plus interest accruing to the day of the decedent's death. If the decedent is not the only person liable for the debt, only a portion of the debt shall be deducted for inheritance tax purposes. The portion deducted is based on the number of solvent obligors. If a joint and several debt has more than one obligor and one obligor pays the remaining balance owed on the debt, the obligor who pays the remaining debt has a right of contribution for payment of the debt against the other solvent obligors. If the decedent is the obligor and the estate pays the remaining balance of the debt, the estate must list the right of contribution as an asset on the Iowa inheritance tax return. *In re Estate of Tollefsrud*, 275 N.W.2d 412 (Iowa 1979); *In re Estate of Thomas*, 454 N.W.2d 66 (Iowa App. 1990); *Estate of Pauline Bladt*, Department of Revenue and Finance, Hearing Office Decision, Docket No. 95-70-1-0174 (December 16, 1996). The term "debt owing by the decedent" is not defined in Iowa Code section 450.12. However, Iowa Code section 633.3(10) defines "debts" as including liabilities of the decedent which survive, whether arising in contract, tort, or otherwise.

The term "debt of the decedent" does not include taxes, which are an impost levied by authority of government upon its citizens or subjects for the support of the state. *Eide v. Hottman*, 257 Iowa 263, 265, 132 N.W.2d 755 (1965). Please note, that this is a nonexclusive example of "debt of the decedent." Promissory notes executed by the decedent without consideration are not debts of the decedent and are not allowable as a deduction in determining the net estate subject to tax. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974). Payments to persons in compromise of their claim to a portion of the estate made by those persons who take from the decedent are not debts nor treated as expenses of settlement. *In re Estate of Bliven*, 236 N.W.2d 366, 371 (Iowa 1975); *In re Estate of Wells*, 142 Iowa 255, 259, 260, 120 N.W. 713 (1909).

Iowa Code section 450.12 and Internal Revenue Code Section 2053 provide that debts owing by the decedent to be allowable in computing the net estate must be the type of obligation of the decedent for which a claim could be filed and be enforced in the probate proceedings of the estate. *In re Estate*

of *McMahon*, 237 Iowa 236, 21 N.W.2d 581 (1946); *In re Estate of Laartz*, Cass County District Court, Probate No. 9641 (1973); *In re Estate of Tracy*, Department of Revenue and Finance, Hearing Officer Decision Docket No. 77-167-3-A (1977). Filing a claim in probate proceedings is not a prerequisite for the allowance of the liability as a deduction in computing the net estate. An allowable liability is deductible whether or not the liability is legally enforceable against the decedent's estate. Claims in probate founded on a promise or agreement are deductible only to the extent they were contracted bona fide and for an adequate and full consideration. *In re McAllister's Estate*, 214 N.W.2d 142 (Iowa 1974).

The debt must have been paid prior to the filing of the inheritance tax return, or if the debt is not paid at the time the final inheritance tax return is filed (which is frequently the case in installment obligations) the burden is on the taxpayer to establish, if requested by the department, that the debt will be paid at a future date. The validity of a claim in probate based on a liability of the decedent is subject to review by the department. *In re Estate of Stephenson*, 234 Iowa 1315, 1319, 14 N.W.2d 684 (1944).

If any doubt or ambiguity exists whether an item is deductible or not, it is to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish that an item is deductible. *In re Estate of Waddington*, 201 N.W.2d 77 (Iowa 1972).

The department may require the taxpayer to furnish reasonable proof to establish the deductible items such as, but not limited to, canceled checks in payment of an obligation, copies of court orders allowing claims against the estate, attorney and fiduciary fees, allowances for the surviving spouse, and copies of notes and mortgages.

*b. Mortgages—decedent's debt.* A mortgage or other encumbrance securing a debt of the decedent on Iowa property in which the decedent had an interest is allowable as a deduction in determining the net estate in the same manner as an unsecured debt of the decedent, even though it may be deducted from different shares of the estate than unsecured debts. (See Iowa Code section 633.278.) However, if the debt of the decedent is secured by property located outside Iowa, which is not subject to Iowa inheritance tax, the debt is allowable as a deduction in determining the net estate, only in the amount the debt exceeds the value of the property securing the debt.

*c. Mortgages—not decedent's debt.* If the gross estate includes property subject to a mortgage or other encumbrance which secures a debt which is not enforceable against the decedent, the amount of the debt, including interest accrued to the day of death, is deductible, not as a debt of the decedent, but from the fair market value of the encumbered property. The deduction is limited to the amount the decedent would have had to pay to remove the encumbrance less the value, if any, of the decedent's right of recovery against the debtor. See *Home Owners Loan Corp. v. Rupe*, 225 Iowa 1044, 1047, 283 N.W. 108 (1938), for circumstances under which the right of subrogation may exist.

*d. Mortgages—nonprobate property.* A debt secured by property not subject to the jurisdiction of the probate court, such as, but not limited to, jointly owned property and property transferred within three years of death is deducted in the same manner as a debt secured by probate property. The fact the property is includable in the gross estate is the controlling factor in determining the deductibility of the debt (providing the debt is otherwise deductible).

*e. Inheritance and accrued taxes.*

(1) Inheritance tax. The inheritance tax imposed in the decedent's estate is not a tax on the decedent's property nor is it a state tax due from the estate. It is a succession tax on a person's right to take from the decedent. The tax is the obligation of the person who succeeds to property included in the gross estate. *Wieting v. Morrow*, 151 Iowa 590, 132 N.W. 193 (1911); *Waterman v. Burbank*, 196 Iowa 793, 195 N.W. 191 (1923). Therefore, inheritance tax is not a deduction in determining the net estate of the decedent in which the tax was imposed. However, if a taxpayer dies owing an inheritance tax imposed in another estate, the tax imposed in the prior estate, together with penalty and interest owing, if any, is a deduction as a state tax due in the deceased taxpayer's estate.

(2) Accrued taxes. In Iowa, property taxes accrue on the date that they are levied even though they are not due and payable until the following July 1. *In re Estate of Luke*, 184 N.W.2d 42 (Iowa 1971); *Merv E. Hilpipre Auction Co. v. Solon State Board*, 343 N.W.2d 452 (Iowa 1984).

Death terminates the decedent's taxable year for income tax purposes. Federal regulation Section 1.443-1(a)(2), 701—paragraph 89.4(9) "b." As a result, the Iowa tax on the decedent's income for the taxable year ending with the decedent's death is accrued on date of death.

In addition, any federal income tax for the decedent's final taxable year is owing at death, even though it is not payable until a later date. Therefore, both the decedent's state and federal income taxes, both for prior years and the year of death, are deductible in computing the taxable estate if unpaid at death.

*f. Federal taxes.* Deductible under this category are the federal estate taxes and federal taxes owing by the decedent including any penalty and interest accrued to the date of death. Prior to 1983, the federal estate tax was prorated based on the portion of federal estate tax attributable to Iowa property and that attributable to property located outside the state of Iowa. However, currently the deductibility of federal estate tax is treated like other liabilities of the estate. For estates with property located in Iowa and outside the state of Iowa, see the proration computation provided in 86.6(2). The deduction is limited to the net federal tax owing after all allowable credits, such as the federal credit for state death taxes paid, have been subtracted. Any penalty and interest imposed or accruing on federal taxes after the decedent's death is not deductible.

*g. Funeral expenses.* The deduction is limited to the expense of the decedent's funeral, which includes, but is not limited to, flowers, cost of meals, cards and postage. Expenses that are not deductible include, but are not limited to, family travel expenses. If the decedent at the time of death was liable for the funeral expense of another, such expense is categorized as a debt of the decedent and is deductible subject to the same conditions as other debts of the decedent. *In re Estate of Porter*, 212 Iowa 29, 236 N.W. 108 (1931). A devise in the decedent's will, or a direction in a trust instrument, to pay the funeral expense of a beneficiary upon death is an additional inheritance in favor of the beneficiary and not a funeral expense deductible in the estate of the testator or grantor. Funeral expense is the liability of the estate of the person who has died. *In re Estate of Kneeb*s, 246 Iowa 1053, 70 N.W.2d 539 (1955).

What constitutes a reasonable expense for the decedent's funeral depends upon the facts and circumstances in each particular estate. Factors to be considered include, but are not limited to: the decedent's station in life and the size of the estate, *Foley v. Brocksmit*, 119 Iowa 457, 93 N.W. 344 (1903); and the decedent's known wishes (tomb rather than a grave), *Morrow v. Durant*, 140 Iowa 437, 118 N.W. 781 (1908). Funeral expense includes the cost of a tombstone or monument. *In re Estate of Harris*, 237 Iowa 613, 23 N.W.2d 445 (1946). A reasonable fee or honorarium paid to the officiating clergy is a deductible funeral expense. *In re Estate of Kneeb*s, 246 Iowa 1053, 1058, 70 N.W.2d 539 (1955). It is not a prerequisite for deductibility that a claim for funeral expenses be filed and allowed in the probate proceedings. It is sufficient that the expense be paid whether or not the claim is legally enforceable against the decedent's estate. The deduction allowable is limited to the net expense of the decedent's funeral, after deducting any expense prepaid by the decedent, burial insurance or death benefit, such as the death benefit allowed by the veterans administration or the social security administration.

*h. Allowance for surviving spouse and dependents.* An allowance for the support of the surviving spouse and dependents to be deductible in determining the net estate for taxation must meet two conditions: First it must be allowed and ordered by the court and second it must be paid from the assets of the estate that are subject to the jurisdiction of the probate court. The allowance is not an additional exemption for the spouse or children. It is part of the costs of administration of the decedent's estate. Iowa Code section 633.374; *In re Estate of DeVries*, 203 N.W.2d 308, 311 (Iowa 1972). Upon request of the department, the taxpayer shall submit a copy of the order of the court providing for the allowance and copies of canceled checks or other documents establishing payment of the allowance.

For the purpose of determining the shares of heirs or beneficiaries for inheritance tax, the allowance is a charge against the corpus of the shares of the estate even though it is paid from the income of the shares. The allowance is included with the other debts and charges for the purpose of abatement of shares to pay the debts and charges of the estate.

*i. Court costs.* The deduction under this category is limited to Iowa court costs only. *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955). The term "court costs" is not synonymous with

“costs of administration” as defined in Iowa Code section 633.3(8) or “administration expenses” under Section 2053(a) of the Internal Revenue Code. See federal regulation Section 20.2053-3(d). “Court costs” is a narrower term. Court costs are part of costs of administration in Iowa and are an expense of administration under the Internal Revenue Code, but not all costs or expenses of administration are court costs. For example, interest payable on an extension of time to pay the federal estate tax is a cost of administration in the estate in which the federal estate tax is imposed, but it is not part of court costs, and therefore not deductible for inheritance tax purposes.

In general, court costs include only those statutory fees and expenses relating directly to the probate proceeding, carried on the clerk’s docket, and paid routinely in the process of closing every estate. *In re Estate of Waddington*, 201 N.W.2d 77, 79 (Iowa 1972). The term “court costs” since August 15, 1975, also includes the expenses of selling property. See Iowa Code sections 450.12 and 633.3(8) and Internal Revenue Code Section 2053 for further details.

*j. Additional liabilities that are deductible.* Subject to subrules 86.6(4) and 86.6(5), the only liabilities deductible from the gross value of the estate include debts owing by the decedent at the time of death, local and state taxes accrued before the decedent’s death, federal estate tax and federal taxes owing by the decedent, a sum for reasonable funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to Section 2053 of the Internal Revenue Code.

(1) Criteria for deductible administration expenses under Section 2053 of the Internal Revenue Code. Administration expenses must meet certain requirements to be allowable deductions under Section 2053 of the Internal Revenue Code. To be allowable deductions, expenses must meet the following conditions:

1. The expenses must be payable out of property subject to claims;
2. The expenses are allowable (not based on the deductible amount) by the law governing the administration of the decedent’s estate;
3. The expenses are actually and necessarily incurred in the administration of the estate. Administration expenses are limited to those expenses incurred in the settlement of the estate and the transfer of the estate property to beneficiaries and trustees, including an executor that is a trustee. Expenses that are not essential to the settlement of the estate, but are incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions; and
4. The allowable amount of expenses for deduction is limited to the value of property included in the decedent’s gross estate and subject to claims, plus amounts paid out of the property not subject to claims against the decedent’s estate, on or before the last day of the ninth month after death or within any granted extension(s) of time for filing the return. “Property subject to claims” is defined as the property includable in the gross estate which bears the burden or would bear the burden under law for payment of the deduction in the final adjustment and settlement of the decedent’s estate, less an initial deduction allowable under Section 2054 of the Internal Revenue Code, for any losses for casualty or theft attributable to such property and incurred during the settlement of the estate.

(2) Allowable administration expenses. Subject to the limitations in paragraph “a” of this subrule, allowable administration expenses under Section 2053 of the Internal Revenue Code include costs and fees incurred in the collection of assets, payment of debts, distribution of property to entitled persons, executor’s commission, attorney’s fees, and miscellaneous administration expenses. Miscellaneous administration expenses include costs or fees for surrogates, accountants, appraisers, clerk hire, storing or maintaining property of the estate, and selling the property of the estate. Expenses for preserving and caring for the property do not include expenditures for additions or improvements or expenses for a longer period than the executor is reasonably required to retain the property. Expenses for selling property of the estate are limited to those for sales that are necessary in order to pay the decedent’s debts, expenses of administration, and taxes, preserve the estate, or effect distribution. Expenses for selling the property include brokerage fees or auctioneer fees and may include the expenses for a sale of an item in a bona fide sale that is below the fair market value of the item. The allowable selling expense for an item sold below its fair market value to a dealer in such items is the lesser of the amount by which the

fair market value of the item on the valuation date exceeded the proceeds from the sale or the amount by which the fair market value of the item on the date of the sale exceeded the proceeds of the sale.

**86.6(2) Prorated liabilities.**

a. The amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator. For the purpose of apportionment of the liabilities, the term "gross estate" means the gross estate for federal estate tax purposes. Provided, if the federal gross estate formula produces a grossly distorted result then, subject to the approval of the department, an alternate apportionment formula may be used either by the department or the taxpayer which fairly represents the particular facts of the estate.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

b. *Liabilities that must be prorated.* If the gross estate includes property with a situs outside Iowa, the liabilities that must be prorated are: (1) court costs, both foreign and domestic; (2) unsecured debts of the decedent regardless of where the debt was contracted; (3) federal and state income tax, including the tax on the decedent's final return, federal estate, gift and excise tax, and state and local sales, use and excise tax; (4) expenses of the decedent's funeral and burial, regardless of the place of interment; (5) allowances for the surviving spouse and children allowed by the probate court in Iowa or another jurisdiction; (6) the expense of the appraisal of property for the purpose of assessing a state death or succession tax; (7) the fees and necessary expenses of the personal representative and the personal representative's attorney allowed by order of court, both foreign and domestic; (8) the costs of the sale of real and personal property, both foreign and domestic, if not otherwise included in court costs; and (9) the amount paid by the personal representative for a bond, both foreign and domestic.

c. *Liabilities that are not prorated.* Liabilities secured by a lien on property included in the gross estate are to be allocated in full to the state of situs. These are liabilities secured by: (1) mortgages, mechanic's liens and judgments; (2) real estate taxes and special assessments on real property; (3) liens for an obligation to the United States of America, a state or any of its political subdivisions; and (4) any other lien on property imposed by law for the security of an obligation.

d. *Prorated cash bequests.* If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see Estate of Dennis M. Billingsley, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

**86.6(3) Liabilities deductible from property not subject to the payment of debts and charges.**

a. *Estates with all of the property located in Iowa.* Subject to the special provisions in 86.6(3) "c," the liabilities deductible under Iowa Code section 450.12 may be deductible in whole or in part from property includable in the gross estate for inheritance tax purposes which under Iowa debtor-creditor law is not liable for the payment of the debts and charges of the estate under the following terms and conditions:

(1) The application of liabilities.

1. The liabilities must be paid. If a liability is not paid in full, the amount deductible is limited to the amount paid. If the amount claimed is not certified as paid by the time the inheritance tax return is filed, the statute requires that the director must be satisfied that the liabilities, or portions thereof deductible, will be paid.

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property

which is excluded from the gross estate, wrongful death proceeds, the first \$10,000 in gifts to each donee made within three years of death and property with a situs outside Iowa.

3. The property included in the gross estate that is under Iowa debtor-creditor law subject to the payment of the deductible liabilities must first be applied to the liabilities, and only after this property has been exhausted can the excess liabilities be applied to the remaining property included in the gross estate.

4. Any excess liabilities remaining unpaid after exhausting the property subject to the payment of the liabilities must be allocated to the remaining property included in the gross estate for inheritance tax purposes on the basis of the ratio the value of each person's share of the remaining property in the gross estate bears to the total value of the remaining property included in the gross estate.

(2) General rules.

1. The source of the funds used for payment of the excess liabilities is not relevant to the allowance of the deduction. It is sufficient for the allowance of the deduction that the liability be paid.

2. The applicability of the statute is limited to the deduction for inheritance tax purposes of those liabilities listed in Iowa Code subsection 450.12(1). It neither enlarges nor diminishes the rights of creditors under existing Iowa law.

3. The statute is not limited to estates which are probated and subject to the jurisdiction of the probate court. The statute also applies to estates which file an inheritance tax return for a tax clearance (CIT proceedings) or those otherwise not probated such as, but not limited to, inter vivos trusts whose assets are subject to inheritance tax, estates consisting of joint tenancy with right of survivorship property, estates whose assets consist of transferred property with a reserved life use or interest, estates whose assets consist of gifts made within three years of the decedent's death and estates consisting entirely of qualified terminal interest property (QTIP) in the estate of the surviving spouse.

The statute will apply to any estate when any share of the estate will remain taxable after being reduced by the liabilities in Iowa Code subsection 450.12(1) which are lawfully charged to the share and the deduction of any statutory exemption. Excess liabilities must be prorated over all of the property not subject to debts and charges regardless of whether or not the property is part of a taxable share.

*b. Estates with part of the property located outside Iowa.* Iowa Code section 450.12(2) and subrule 86.6(2) require that the liabilities deductible be prorated in those estates where a portion of the property included in the gross estate has a situs outside Iowa. Subject to the special provision in 86.6(3) "c," in these estates the portion of the liabilities deductible which is allocated to the Iowa property under the proration formula must first be applied to the Iowa situs property which is subject to the payment of the liabilities. Any portion of the liabilities allocated to Iowa remaining unpaid may then be applied to the other Iowa property included in the gross estate subject to the same limitations provided for in 86.6(3) "a"(1)"1" to "4."

*c. Special rule for liabilities secured by property included in the gross estate.* If a liability which is deductible under Iowa Code section 450.12(1) "a" is secured by property included in the gross estate, then the liability is deductible from the specific property that secures the liability, regardless of whether or not the property is subject to the payment of the ordinary debts and charges of the estate. If the liability exceeds the value of the property that secures it and is the obligation of the decedent, then any excess liability is deductible under the same rules that govern unsecured obligations.

**86.6(4) Resident and nonresident deductions distinction abolished.** Effective for estates of decedents dying on or after July 1, 1983, the domicile of the decedent is not relevant in determining whether a liability is deductible in computing the net estate. In the case of *In re Estate of Evans*, 246 Iowa 893, 68 N.W.2d 289 (1955) applies only to estates of decedents dying prior to July 1, 1983. However, the amount of the liability that is deductible depends upon the situs of the property in the gross estate.

If part of the property included in the gross estate has a situs in a jurisdiction other than Iowa, only a pro rata amount of the liabilities specified in Iowa Code section 450.12, with the exception of liabilities secured by a lien on property, is deductible in computing the net estate for Iowa inheritance tax purposes. The amount deductible is computed by multiplying the total amount of the unsecured liabilities by a fraction of which the Iowa situs property in the gross estate is the numerator and the total gross estate is the denominator.

Liabilities secured by a lien on property are allocated to the state of situs. If the secured liability exceeds the value of the security, any excess is prorated in the same manner as an unsecured liability.

This rule is intended to implement Iowa Code sections 450.7(1), 450.12, 450.22, 450.24, 450.38, 450.89, 633.278, and 633.374.

**701—86.7(450) Life estate, remainder and annuity tables—in general.** For estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986, the value of a life estate in property, an annuity for life and the value of a remainder interest in the property, shall be computed by the use of the commissioners' standard ordinary mortality table at the rate of 4 percent per annum.

**86.7(1) Tables for life estates and remainders.** This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. The two factors on the same line on the next page added together equal 100 percent. Multiply the corpus of the estate by the first factor to obtain the value of the life estate. Use the second factor to obtain the value of the remainder interest in the corpus if the tax is to be paid within 12 months after the death of the decedent who created the life estate remainder. If the tax on the remainder is to be paid prior to the death of the life tenant, but after one year from the decedent's death, use the remainder factor opposite the age of the life tenant at the time the tax is to be paid.

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174

<u>Age of Life Tenant</u>	<u>Life Estate</u>	<u>Remainder</u>
95	.04866	.95134
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	1.00000

**86.7(2)** *Table for an annuity for life.* This subrule only applies to estates of decedents dying on or after July 4, 1965, and prior to January 1, 1986. To find the present value of an annuity or a given amount (specified sum) for life, annualize the annuity payments and multiply the result by the annuity factor in Column 3 opposite the age at the nearest birthday of the person receiving the annuity.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in Years</u>	<u>Life Expectancy in Years</u>	<u>4% Annuities \$1.00</u>
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in</u> <u>Years</u>	<u>Life</u> <u>Expectancy</u> <u>in Years</u>	<u>4%</u> <u>Annuities</u> <u>\$1.00</u>
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061
86	4.06	3.0988
87	3.80	2.8961
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
<u>Age in Years</u>	<u>Life Expectancy in Years</u>	<u>4% Annuities \$1.00</u>
95	1.80	1.2166
96	1.51	.9503
97	1.18	.6487
98	.83	.3189
99	.50	.0000

**86.7(3)** *Annuity tables when the term is certain.* This table is to be used to compute the present values of two types of annuities: (1) the use of property for a specific number of years and (2) an annuity of a specific amount of money for a number of years certain. To compute the present value of the first annuity, multiply the value of property by 4 percent. Then multiply the result by the annuity factor opposite the number of years of the annuity. Multiply the value of the property by the remainder factor for the present value of the remainder. For the second annuity annualize the payments and multiply the result by the annuity factor opposite the number of years of the annuity. Subtract the present value of the annuity from the value of the property from which the annuity is funded for the remainder value.

<u>Number of Years</u>	<u>Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years</u>	<u>Present Value of One Dollar, Payable at the End of a Certain Number of Years</u>
	<u>ANNUITY</u>	<u>REMAINDER</u>
1	\$0.96154	\$0.961538
2	1.88609	0.924556
3	2.77509	0.888996
4	3.62990	0.854804
5	4.45182	0.821927
6	5.24214	0.790315
7	6.00205	0.759918
8	6.73274	0.730690
9	7.43533	0.702587
10	8.11090	0.675564
11	8.76048	0.649581
12	9.38507	0.624597
13	9.98565	0.600574
14	10.56312	0.577475
15	11.11839	0.555265
16	\$11.65230	\$0.533908
17	12.16567	0.513373
18	12.65930	0.493628
19	13.13394	0.474642
20	13.59033	0.456387

<u>Number of Years</u>	<u>Present Value of an Annuity of One Dollar, Payable at the End of Each Year, for a Certain No. of Years</u>	<u>Present Value of One Dollar, Payable at the End of a Certain Number of Years</u>
	ANNUITY	REMAINDER
21	14.02916	0.438834
22	14.45112	0.421955
23	14.85684	0.405726
24	15.24696	0.390121
25	15.62208	0.375117
26	15.98277	0.360689
27	16.32959	0.346817
28	16.66306	0.333477
29	16.98371	0.320651
30	17.29203	0.308319

**86.7(4)** *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986.* For estates of decedents dying on or after January 1, 1986, the following tables are to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following tables are to be applied in the same manner as specified in subrule 86.7(1).

1980 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	.91904	.08096	50	.61730	.38270
1	.91919	.08081	51	.60576	.39424
2	.91689	.08311	52	.59399	.40601
3	.91443	.08557	53	.58199	.41801
4	.91186	.08814	54	.56979	.43021
5	.90914	.09086	55	.55740	.44260
6	.90629	.09371	56	.54483	.45517
7	.90329	.09671	57	.53206	.46794
8	.90014	.09986	58	.51906	.48094
9	.89683	.10317	59	.50582	.49418
10	.89338	.10662	60	.49234	.50766
11	.88977	.11023	61	.47862	.52138

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
12	.88603	.11397	62	.46471	.53529
13	.88219	.11781	63	.45064	.54936
14	.87828	.12172	64	.43647	.56353
15	.87429	.12571	65	.42226	.57774
16	.87027	.12973	66	.40801	.59199
17	.86617	.13383	67	.39372	.60628
18	.86200	.13800	68	.37936	.62064
19	.85773	.14227	69	.36489	.63511
20	.85333	.14667	70	.35031	.64969
21	.84878	.15122	71	.33565	.66435
22	.84404	.15596	72	.32098	.67902
23	.83912	.16088	73	.30639	.69361
24	.83399	.16601	74	.29199	.70801
25	.82865	.17135	75	.27787	.72213
26	.82306	.17694	76	.26405	.73595
27	.81724	.18276	77	.25053	.74947
28	.81117	.18883	78	.23727	.76273
29	.80487	.19513	79	.22422	.77578
30	.79833	.20167	80	.21134	.78866
31	.79155	.20845	81	.19866	.80134
32	.78451	.21549	82	.18625	.81375
33	.77723	.22277	83	.17419	.82581
34	.76970	.23030	84	.16260	.83740
35	.76192	.23808	85	.15151	.84849
36	.75389	.24611	86	.14093	.85907
37	.74562	.25438	87	.13081	.86919
38	.73710	.26290	88	.12108	.87892
39	.72836	.27164	89	.11163	.88837
40	.71940	.28060	90	.10235	.89765
41	.71022	.28978	91	.09309	.90691
42	.70083	.29917	92	.08368	.91632
43	.69122	.30878	93	.07390	.92610
44	.68138	.31862	94	.06350	.93650
45	.67131	.32869	95	.05221	.94779
46	.66101	.33899	96	.03994	.96006
47	.65046	.34954	97	.02678	.97322
48	.63966	.36034	98	.01321	.98679
49	.62860	.37140	99	.00000	1.00000

**86.7(5)** *Table for an annuity for life —for estates of decedents dying on or after January 1, 1986.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986. The table is to be used in the same manner as the table listed in subrule 86.7(2).

1980 CSO-D MORTALITY TABLE  
 BASED ON BLENDING 50% MALE—50% FEMALE  
 (PIVOTAL AGE 45)  
 AGE NEAREST BIRTHDAY  
 4% INTEREST

<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>	<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
0	73.30	22.976	50	27.45	15.433
1	72.56	22.980	51	26.61	15.144
2	71.63	22.922	52	25.77	14.850
3	70.70	22.861	53	24.94	14.550
4	69.76	22.796	54	24.13	14.245
5	68.82	22.728	55	23.32	13.935
6	67.87	22.657	56	22.52	13.621
7	66.93	22.582	57	21.73	13.301
8	65.98	22.504	58	20.95	12.976
9	65.03	22.421	59	20.18	12.645
10	64.07	22.334	60	19.41	12.308
11	63.12	22.244	61	18.66	11.966
12	62.16	22.151	62	17.91	11.618
13	61.21	22.055	63	17.18	11.266
14	60.27	21.957	64	16.45	10.912
15	59.32	21.857	65	15.75	10.557
16	58.39	21.757	66	15.05	10.200
17	57.46	21.654	67	14.38	9.843
18	56.53	21.550	68	13.71	9.484
19	55.61	21.443	69	13.06	9.122
20	54.69	21.333	70	12.42	8.758
21	53.77	21.219	71	11.79	8.391
22	52.85	21.101	72	11.17	8.024
23	51.93	20.978	73	10.57	7.660
24	51.01	20.850	74	10.00	7.300
25	50.08	20.716	75	9.44	6.947
26	49.15	20.576	76	8.91	6.601
27	48.23	20.431	77	8.39	6.263
28	47.30	20.279	78	7.90	5.932
29	46.36	20.122	79	7.42	5.605
30	45.43	19.958	80	6.96	5.283
31	44.50	19.789	81	6.52	4.967
32	43.57	19.613	82	6.09	4.656
33	42.64	19.431	83	5.68	4.355
34	41.72	19.242	84	5.29	4.065
35	40.79	19.048	85	4.93	3.788
36	39.87	18.847	86	4.58	3.523

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES \$1.00	AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES \$1.00
37	38.94	18.640	87	4.26	3.270
38	38.03	18.428	88	3.95	3.027
39	37.11	18.209	89	3.66	2.791
40	36.21	17.985	90	3.37	2.559
41	35.30	17.756	91	3.09	2.327
42	34.41	17.521	92	2.81	2.092
43	33.52	17.280	93	2.52	1.848
44	32.63	17.035	94	2.22	1.588
45	31.75	16.783	95	1.90	1.305
46	30.88	16.525	96	1.56	.999
47	30.01	16.261	97	1.20	.670
48	29.15	15.991	98	.84	.330
49	28.30	15.715	99	.50	.000

This rule is intended to implement Iowa Code sections 450.51 and 450.52.

**701—86.8(450B) Special use valuation.**

**86.8(1) *In general.*** Effective for estates of decedents dying on or after July 1, 1982, real estate which has been valued at its special use value under 26 U.S.C. Section 2032A for computing the federal estate tax is eligible to be valued for inheritance tax purposes at its special use value, subject to the limitations imposed by statute and these rules. Special use valuation under the provisions of Iowa Code chapter 450B is in lieu of valuing the real estate at its fair market value in the ordinary course of trade under Iowa Code section 450.37. The valuation of real estate at its special use value must be made on the entire parcel of the real estate in fee simple. The value of undivided interests, life or term estates and remainders in real estate specially valued is determined by (1) applying the life estate, remainder or term tables to the special use value—see rule 86.7(450), or (2) by dividing the special use value by the decedent’s fractional interest in case of an undivided interest. The eligibility of real estate for special use value is not limited to probate real estate. Real estate transfers with a retained life use or interest, real estate held in joint tenancy, real estate transferred to take effect in possession or enjoyment at death, real estate held by a partnership or corporation and real estate held in trust are noninclusive examples of real estate not subject to probate that may be eligible for special use valuation.

**86.8(2) *Definitions and technical terms.*** References in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.3(5). Technical terms such as, but not limited to, “qualified real property”; “qualified use”; “cessation of qualified use”; “disposition”; “qualified heir”; “member of the family”; “farm”; “farming purpose”; “material participation”; and “active management” are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 2032A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

**86.8(3) *Eligibility requirements.*** The eligibility requirements for valuing real estate at its special use value for computing inheritance tax are the same as the eligibility requirements of 26 U.S.C. Section 2032A for the purpose of computing the federal estate tax imposed by 26 U.S.C. Section 2001. Real estate cannot be specially valued for inheritance tax purposes unless it is also eligible and is valued at its special use value for federal estate tax purposes. However, even though real estate is specially valued for federal estate tax purposes, the estate has the right to elect or not to elect to value real estate at its special use value for computing the inheritance tax. Real estate otherwise qualified will be eligible for

special use valuation for Iowa inheritance tax purposes if a valid special use valuation election has been made on the federal estate tax return. What constitutes a valid election for federal estate tax purposes is determined under applicable federal law and practice and is not determined by the department.

**86.8(4) Real estate—not eligible.**

*a.* Real estate otherwise qualified is not eligible to be specially valued for inheritance tax purposes if it is not includable in the federal gross estate. For example, a gift of real estate may not be part of the federal gross estate. However, the real estate may be a taxable gift, but the real estate would not qualify for special valuation.

*b.* Real estate, otherwise qualified, will not be eligible for the special use valuation provisions of Iowa Code chapter 450B, if the owner of a remainder, or other future property interest in the real estate, defers the payment of the inheritance tax until the termination of the prior estate. Special use valuation is made at the date of the decedent's death, while Iowa Code section 450.44 requires the future interest to be revalued at the time of the termination of the prior estate when the tax is deferred. See *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950); department subrules 86.2(8) and 86.2(9). In addition, when the tax has been deferred the life estate-remainder factor to be used in computing the tax on the future interest is the factor existing at the time of payment or the termination of the prior estate, while the additional inheritance tax under special use value is based on the life estate-remainder factor at the time of death. See *In re Estate of Millard*, 251 Iowa 1982, 105 N.W.2d 95 (1960). A second valuation after death is not within the scope of either 26 U.S.C. Section 2032A or Iowa Code chapter 450B. Since all persons with an interest in the real estate must sign the agreement specified in 86.8(5)“e,” the deferral of the inheritance tax on a future property interest disqualifies all of the property interests in the real estate because the future property interest is not eligible to be specially valued in case of a deferral of the tax.

**86.8(5) Election and agreement.**

*a. In general.* The election to specially value real estate under the provisions of Iowa Code chapter 450B must be made by the fiduciary for the estate or trust on the inheritance tax return or on a statement attached to the return. The election may be made on a delinquent return. However, once made, the election is irrevocable. The election is an affirmative act. Therefore, failure to make an election on the inheritance tax return shall be construed as an election not to specially value real estate under Iowa Code chapter 450B.

*b. Form—election.* The election to value real estate at its special use value shall comply with the requirements of 26 U.S.C. Section 2032A(d) and federal regulation Section 20.2032A-8. An executed copy of the election filed as part of the federal estate tax return and accepted by the Internal Revenue Service will fulfill the requirements of this subrule.

*c. Content of the election.* The election must be accompanied by the agreement specified in 86.8(5)“e” and shall contain the information required by federal regulation Section 20.2032A-8. Submission of an executed copy of the information required by federal regulation Section 20.2032A-8(3) in support of the election to specially value property for federal estate tax purposes will fulfill the requirements of this subrule.

*d. Protective elections.* A protective election may be made to specially value qualified real property for inheritance tax purposes. The availability of special use valuation is contingent upon values, as finally determined for federal estate tax purposes, meeting the requirements of 26 U.S.C. Section 2032A. The protective election must be made on the inheritance tax return and shall contain substantially the same information required by federal regulation Section 20.2032A-8(b). Submission of an executed copy of the protective election filed and accepted for federal estate tax purposes will fulfill the requirements of this subrule.

If it is found that the real estate qualifies for special use valuation as finally determined for federal estate tax purposes, an additional notice of election must be filed within 60 days after the date of the determination. The notice must set forth the information required in 86.8(5)“c” and is to be attached, together with the agreement provided for in 86.8(5)“e,” to an amended final inheritance tax return. Failure to file the additional notice within the time prescribed by this subrule shall disqualify the real estate for special use valuation.

*e. Agreement.* An agreement must be executed by all parties who have any interest in the property to be valued at its special use value as of the date of the decedent's death. In the agreement, the qualified heirs must consent to personal liability for the additional inheritance tax imposed by Iowa Code section 450B.3 in the event of early disposition or cessation of the qualified use. All other parties with an interest in the property specially valued must consent to liability for the additional inheritance tax to the extent of the additional tax imposed on their share of the property no longer eligible to be specially valued. The liability of the qualified heir or the successor qualified heir for the additional inheritance tax is not dependent on the heir's share of the property specially valued, but rather it is for the amount of the additional inheritance tax imposed on all of the shares of the parties with an interest in the property no longer eligible for special use value.

*f. Failure to file the election and agreement.* Failure to file with the inheritance tax return either the election provided for in 86.8(5) "b" or the agreement specified in 86.8(5) "e" shall disqualify the property for the special use value provisions of Iowa Code chapter 450B. In the event of disqualification, the property shall be valued for inheritance tax purposes at its market value in the ordinary course of trade under the provisions of Iowa Code section 450.37.

**86.8(6) Value to use.**

*a. Special use value.* The special use value established and accepted by the Internal Revenue Service for the qualified real property shall also be the value of the qualified real property for the purpose of computing the inheritance tax on the shares in the specially valued property.

*b. Fair market value when a recapture tax is imposed.* The additional inheritance tax imposed by Iowa Code section 450B.3, due to the early disposition or cessation of the qualified use, is based on the fair market value of the qualified real property at the time of the decedent's death as reported and established in the election to value the real estate at its special use value, subject to the limitations in 86.8(6) "c." Iowa Code chapter 450B makes reference only to the use of federal values. Therefore, a fair market value appraisal made by the Iowa inheritance tax appraisers cannot be used in computing the amount of the additional inheritance tax imposed unless it is accepted by the Internal Revenue Service. Iowa Code section 450.37 only applies to property which is not specially valued under Iowa Code chapter 450B.

*c. Fair market value limitations.* The following fair market value limitations shall govern the computation of the additional inheritance tax imposed, if any. If at the time of its disposition or cessation of the qualified use, the fair market value of the property which is the subject of the additional tax is:

1. Greater than its fair market value at the time of the decedent's death, the additional tax is computed on the fair market value at death.

2. Less than its fair market value at the time of death but greater than the special use value, the additional tax is computed on the lesser fair market value.

3. Equal to or less than the special use value of the property, no additional inheritance tax is imposed. In this event, no refund is allowed. Iowa Code chapter 450B makes reference only to the imposition of additional inheritance tax, not to an additional benefit if the agreement is not fulfilled.

As a result, failure to fulfill the agreement provided for in 86.8(5) "e" may, in certain circumstances, result in a lower tax liability than would have been the case had the special use valuation election not been made.

The rule for computing the additional federal estate tax under 26 U.S.C. Section 2032A(c) is different. See lines 8 to 11, Additional Federal Estate Tax Form 706-A and IRS letter ruling 8215036 (1982).

**86.8(7) Imposition of additional inheritance tax.**

*a. In general.* If within ten years after the decedent's death there is a disposition of the property or a cessation of the qualified use within the meaning of 26 U.S.C. Section 2032A(c), an additional inheritance tax is imposed on the shares in the qualified real property specially valued, subject to the limitation in 86.8(6) "c." Failure to begin the special use within two years after the decedent's death disqualifies the property for the special use valuation provisions of Iowa Code chapter 450B. However, the ten-year period for imposing an additional inheritance tax is not extended by the period of time between the decedent's death and the beginning date of the special use. The rule for federal estate tax purposes is

different. The ten-year period for federal estate tax purposes is extended by the period of time between the decedent's death and the time the special use begins. See 26 U.S.C. Section 2032A(c)(7)(A)(ii). In this respect, the Iowa law does not conform to the federal statute. See Iowa Code section 450B.3.

*b. Additional tax on life or term estates and remainders.* The additional tax on life or term estates and remainders in real estate which no longer qualifies for special use valuation is computed as if the special use valuation had not been elected. Therefore, if age or time is a determining factor in computing the additional tax, it is the age or time at the date of the decedent's death which governs the computation, not the age or time at the date of the disposition or cessation of the qualified use. Therefore, subrule 86.2(7) implementing Iowa Code section 450.44 does not apply. Iowa Code section 450B.3 makes no provision for deferral of the additional tax on a future property interest in real estate which is no longer eligible to be specially valued.

*c. Interplay of the additional inheritance tax with the Iowa estate tax.* In the event of an early disposition or cessation of the qualified use of the specially valued real estate, the federal estate tax is recomputed with a corresponding recomputation of the credit allowable under 26 U.S.C. Section 2011 for state death taxes paid. If the maximum allowable credit for state death taxes paid as recomputed is greater than the total inheritance tax obligation on all of the shares of the estate, including the shares which have not been revalued, the amount of the maximum credit for state death taxes paid is the additional tax. See Iowa Code section 451.2.

*d. Computation of the tax—full disposition or full cessation.* If there is an early disposition or a cessation of the qualified use of all of the real estate specially valued, the inheritance tax on the shares of all persons who succeed to the real estate from the decedent are recomputed based on the fair market value of the specially valued real estate. See 86.8(6) "c" on which market value to use. The total revalued share of each person who had an interest in the disqualified real property is the value of that person's share of the property not specially valued plus the revalued share of the special use property. The tax is then recomputed based on the applicable exemption, if any, allowable under Iowa Code section 450.9 and the rates of tax specified in Iowa Code section 450.10 in effect at the time of the decedent's death. A credit is allowed against the amount of the recomputed tax, without interest, for the tax paid which was based on the special use value.

EXAMPLES: Disposition of all of the qualified real property.

It is assumed in these examples that the real estate has qualified for special use valuation and that prior to the date of disposition, the real estate remained qualified.

EXAMPLE. Farmer A, a widower, died July 1, 1992, a resident of Iowa, and by will left all of his property to his three nephews in equal shares. Nephew B operates the farm. Nephew C lives in Des Moines, Iowa, and Nephew D lives in Phoenix, Arizona. At the time of death, Farmer A's estate consisted of:

<u>Asset</u>	<u>Fair Market Value</u>	<u>Special Use Value</u>
160-acre Iowa farm	\$ 480,000 (\$3,000 per acre)	\$ 160,000 (\$1,000 per acre)
Grain and livestock	90,000	90,000
Stocks, bonds and bank accounts	<u>80,000</u>	<u>80,000</u>
Gross Estate	\$ 650,000	\$ 330,000
Less: Deductions without federal estate tax	<u>25,000</u>	<u>25,000</u>
Net estate before federal estate tax	\$ 625,000	\$ 305,000

COMPUTATION OF THE INHERITANCE TAX  
UNDER SPECIAL USE VALUATION

Net estate before federal estate tax	\$305,000
Less: Federal estate tax	4,120
Net Estate	\$300,880

TAX ON SHARES

<u>Beneficiary</u>	<u>Share</u>	<u>Tax</u>
To each nephew	\$101,666.67	\$11,250.00
Total Tax Paid	$\$11,250 \times 3$	= \$33,750.00

On October 15, 1995, Nephew B, the qualified heir, retires from farming and all three nephews sell the farm to a nonrelated party for \$3,200 per acre, or \$512,000. Under 86.8(6)“c,” the \$3,000 per acre valuation at death governs the computation of the additional inheritance tax.

COMPUTATION OF THE ADDITIONAL INHERITANCE TAX DUE TO THE EARLY  
DISPOSITION OF THE QUALIFIED USE PROPERTY

Net estate before federal estate tax	\$625,000
Less: Revised federal estate tax ( $\$9,250$ was deducted for credit for state death taxes paid)	0
Net Estate	\$625,000

<u>Tax on Shares</u>	<u>Share</u>	<u>Tax</u>
To each nephew \$208,333.33	\$27,250.00	
Less tax previously paid	<u>11,250.00</u>	
	16,000.00	
Additional tax due		
Interest at 10% from 4-03-93 to due date 4-15-96		<u>\$4,734.40</u>
Total Due Each Nephew		\$20,734.40
Total additional tax and interest for all three shares $\$20,734.40 \times 3 = \$62,203.20$ .		

NOTE: In this example, the total additional tax for the three nephews before a credit for tax previously paid is  $\$27,250.00 \times 3$  or  $\$81,750.00$ . The credit for state death taxes paid on the revalued federal estate is  $\$9,250.00$ . Therefore, the larger amount is the additional tax, before the credit for tax previously paid is deducted. The additional inheritance or Iowa estate tax bears interest at 10 percent beginning the last day of the ninth month after the decedent's death until the due date, which is six months after the disposition of the specially valued real estate. Interest accrues on delinquent tax at the same rate. Since interest only accrues on unpaid tax, the amount of the interest in this example would have been less if the tax had been paid prior to its due date, April 15, 1996.

*e. Computation of the tax—partial disposition or cessation of the qualified use.*

(1) First partial disposition or cessation of the qualified use. Compute the maximum amount of the additional tax that would be due from each person who has an interest in the portion of the real estate no longer eligible to be specially valued, as if there were an early disposition or cessation of the qualified use of all that person's specially valued real estate. The additional tax on a partial disposition or cessation of the qualified use is computed by multiplying the maximum amount of the additional tax by a fraction of which the fair market value of the portion no longer eligible is the numerator and the fair market value

of all of that person's specially valued real estate is the denominator. The resulting amount is the tax due on the first partial disposition or cessation of the qualified use.

EXAMPLE 1. First partial additional tax. Assume the fair market value of three parcels of real estate owned by a single qualified heir (brother of the decedent) is \$100,000 and the special use value of the three parcels is \$75,000. The qualified heir is in the 10 percent tax bracket. FMV in this example means fair market value.

Parcel 1, fair market value	\$25,000
Parcel 2, fair market value	50,000
Parcel 3, fair market value	25,000

Computation of Maximum Amount of Additional Tax

Tax based on fair market value (\$100,000 × 10%)	\$10,000
Tax based on special use value (\$75,000 × 10%)	7,500
Maximum amount of additional tax	<u>\$ 2,500</u>

Computation on the First Partial Additional Tax

Parcel 1, sale to an unrelated party

FMV of Parcel 1	<u>\$ 25,000</u>	×	\$2,500	=	\$625
FMV of all special use property	\$100,000		(Maximum add'l tax)		(First add'l tax)

(2) Second or any succeeding disposition or cessation of the qualified use. Compute the maximum amount of the additional tax as outlined in the first partial disposition or cessation of the qualified use. Increase the numerator of the fraction used to determine the first additional tax by the fair market value of the second partial disposition or cessation of the qualified use. The denominator remains the same. The computed tax is then credited with the tax paid on the first partial disposition or cessation of the qualified use. Succeeding partial dispositions or cessations of the qualified use are handled in the same manner by increasing the numerator of the fraction and a corresponding increase in the credit for the prior additional tax paid.

Computation of the second and succeeding partial dispositions or cessations of the qualified use can be illustrated by the following examples:

EXAMPLE 2. Second partial additional tax. Same facts as in Example 1. In this example, Parcel 2 is sold to an unrelated party.

Computation of the Second Partial Additional Tax

FMV of Parcels 1 & 2	<u>\$ 75,000</u>	×	\$2,500	=	\$1,875
FMV of all special use property	\$100,000		(Maximum add'l tax)		
Less tax paid on Parcel 1					<u>625</u>
Second Add'l Tax					\$1,250

EXAMPLE 3. Third partial additional tax. Same facts as in Example 1. In this example, Parcel 3 is sold to an unrelated party.

Computation of the Third Partial Additional Tax

FMV of Parcels 1, 2, & 3	\$100,000	×	\$2,500 (Maximum add'l tax)	=	\$2,500
FMV of all specially valued real estate	\$100,000				
Less tax paid on Parcels 1 & 2					1,875
Third Additional Tax					\$ 625

*f. No additional tax on shares not revalued.* The shares of persons who received no interest in the real estate which is no longer eligible to be specially valued are not subject to an additional tax. Therefore, on the amended final inheritance tax return only the shares of the persons receiving interest in the real estate need to be revalued when computing the additional tax under this subrule.

**EXAMPLE.** Decedent A, a widower and resident of Iowa, died testate July 1, 1992, survived by nephew B and niece C. His estate consisted of two Iowa farms and certain personal property. Under A's will, the niece and nephew share equally in the personal property. Nephew B received one farm and niece C the other one. Nephew B, a qualified heir, elected to specially value his farm and niece C did not. The inheritance tax was paid on this basis. Five years after A's death, nephew B quits farming and sells his inherited farm to an unrelated party, thus incurring an additional inheritance tax. Only nephew B owes an additional tax. Niece C's share in the estate is not revalued.

**86.8(8) Return for additional inheritance tax.** The return reporting the additional inheritance or Iowa estate tax imposed due to the early disposition or cessation of the qualified use shall conform as nearly as possible to the federal additional estate tax return, Form 706A, as can be done within the framework of an inheritance tax on shares instead of an estate tax. The return must be executed by the qualified heir and filed with the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

**86.8(9) Due date for paying the additional inheritance tax.** The additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2 and the return for the additional tax is due six months after the early disposition or cessation of the qualified use of the real estate specially valued.

**86.8(10) No extension of time to file or pay.** Iowa Code chapter 450B makes no provision for an extension of time to file the return for the additional tax and pay the additional inheritance tax or Iowa estate tax due. Therefore, if the return for the additional tax is not filed or the additional inheritance or Iowa estate tax is not paid within six months after the early disposition or cessation of the qualified use, the return or the tax is delinquent and subject to penalty under subrule 86.8(13).

**86.8(11) Interest on additional tax.** The additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2 accrues interest at the rate of 10 percent per annum until paid commencing the last day of the ninth month after the decedent's death. The variable prime interest rate made applicable to inheritance tax by 1981 Iowa Acts, chapter 131, sections 15 and 16, on real estate not specially valued, does not apply to interest due on the additional tax imposed by Iowa Code section 450B.3 or 451.2. In addition, the federal rule that interest only accrues on the additional federal estate tax when an election is made under 26 U.S.C. Section 1016(c) to increase the basis for gain or loss on the real estate no longer eligible to be specially valued, has no application to Iowa special use valuation. In this respect the Iowa law does not conform to the federal statute.

**86.8(12) Receipt for additional tax.** The receipt for the additional tax imposed by Iowa Code section 450B.3 or 451.2, is separate and distinct from the receipt for inheritance tax required by Iowa Code section 450.64. The receipt must identify the property which was the subject of the early disposition or cessation of the qualified use, the owners of the property, the qualified heir, the amount paid and whether the additional tax paid is for a partial or full disposition or cessation of the qualified use.

**86.8(13) Penalty for failure to file or failure to pay.** Department rules 701—Chapter 10, pertaining to the penalty for failure to timely file the return or to pay the inheritance tax imposed by Iowa Code chapter 450, also apply where there is a failure to timely file the return reporting the additional inheritance or Iowa estate tax or to pay the additional tax due imposed by Iowa Code section 450B.3 or 451.2.

**86.8(14) Duties and liabilities.**

*a. Duty to report an early disposition or cessation of the qualified use.* The agent designated in the agreement required by 86.8(5)“e” has the duty to notify the department of any early disposition or cessation of the qualified use of the property on or before the due date of the additional inheritance tax. An executed copy of the notice required by federal regulation Section 20.2032A(c)(4) will satisfy this subrule.

*b. Liability for payment of the tax.* The qualified heir or the heir’s successor is personally liable for all the additional inheritance or Iowa estate tax imposed under Iowa Code section 450B.3 or 451.2. It is the qualified heir’s duty to collect the additional Iowa inheritance or Iowa estate tax from each person whose share was revalued. In respect to the additional tax, the duty of the qualified heir is the same as the duty of the fiduciary of an estate or trust under Iowa Code section 450.5, for the regular inheritance or Iowa estate tax. See subrule 86.2(1) regarding the responsibility of the fiduciary of an estate or trust. While the qualified heir is primarily liable for the payment of all of the additional tax, each person who has an interest in the real estate no longer eligible to be specially valued is also liable under the agreement provided for in 86.8(5)“e” for additional tax on that person’s revalued share. Therefore, if the qualified heir fails to pay the additional Iowa estate tax or the additional tax imposed on any revalued share, the department may proceed to collect the delinquent tax from the person who received the share. The liability for the additional tax due from each person who had an interest in the revalued real estate is the same as the liability for the inheritance tax on property not specially valued. See *Eddy v. Short*, 190 Iowa 1376, 1380, 1832, 179 N.W. 818 (1920); *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906).

*c. Books and records.* It is the duty of the qualified heir to keep books and records necessary to substantiate the continued eligibility of the real estate for special use valuation. Upon request, the agent designated in the agreement shall furnish the department sufficient information relating to the use, ownership and status of the real estate to enable the department to determine whether there has been an early disposition or cessation of the qualified use.

**86.8(15) Special lien for additional inheritance tax.**

*a. In general.* The special lien created by Iowa Code section 450B.6 is separate and distinct from the lien provided for in Iowa Code section 450.7, for the inheritance tax imposed at the time of the decedent’s death. The special lien is to secure any additional inheritance or Iowa estate tax that may be due within the ten-year period after the decedent’s death, should there be an early disposition or cessation of the qualified use. The inheritance tax lien provided for in Iowa Code section 450.7 is only to secure the tax imposed at the time of the decedent’s death on the transfer of property including property that is specially valued. If an additional tax is imposed for the early disposition or cessation of the qualified use, it is secured by the lien created by Iowa Code section 450B.6.

*b. Form of the notice of the special lien.* The notice of the special lien for additional inheritance or Iowa estate tax created by Iowa Code section 450B.6 must conform as nearly as possible to the special use valuation lien provided for in 26 U.S.C. Section 6324B.

*c. Notice of lien.* Unlike the lien provided for in Iowa Code section 450.7, notice of the special lien for additional inheritance or Iowa estate tax must be recorded before it has priority over subsequent mortgagees, purchasers or judgment creditors. The special lien is perfected by recording the notice of the special lien in the recorder’s office in the county where the estate is being probated (even though the real estate may be located in a different county). Failure to perfect the special lien by recording as provided for in Iowa Code section 450B.6 divests the qualified real property from the lien in the event of a sale to a bona fide purchaser for value.

*d. Duration of the special lien.* The special lien continues:

(1) Until the additional inheritance or Iowa estate tax is paid, or ten years after the date the additional tax is due, whichever first occurs, if there is an early disposition or cessation of the qualified use, or

(2) For ten years after the decedent’s death on all other property which has been specially valued.

*e. Release of the lien.* The special lien for additional inheritance tax:

(1) May be released at any time in whole or in part upon adequate security being given to secure the additional tax that may be due, if any.

(2) Is released by payment of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2, on the property which was the subject of an early disposition or cessation of the qualified use.

(3) Is released when it becomes unenforceable by reason of lapse of time.

*f. Application to release the lien.* Ten years after the decedent's death, unless there is an additional tax remaining unpaid, the qualified heir may submit to the department an application in writing for release of the lien on the real estate specially valued. The application must contain information necessary to enable the department to determine whether or not the special use valuation lien should be released. Supporting documentation may include a copy of the federal release. If, after audit of the application, it is determined the real estate remained eligible for special valuation, the department will release the lien.

**86.8(16) Valuation of the decedent's interest in corporations, partnerships and trusts—special rules.** If the decedent's interest in a corporation, partnership or a trust has been valued at its special use valuation under 26 U.S.C. Section 2032A for federal estate tax purposes, it is also eligible to be valued at its special use value for inheritance tax purposes, subject to the limitation imposed by statute and these rules. See Internal Revenue Service letter ruling 8108179 (1980) for guidelines in valuing the decedent's interest. Other factors indicative of value, such as the value of other assets, net dividend-paying capacity, book value, profit and loss statements and net worth must also be taken into account in arriving at the value of the decedent's interest for inheritance tax purposes. See Revenue ruling 59-60, 1959-1 C.B. 243 for the factors to be considered in valuing closely held corporate stock. In the event the decedent's interest in a corporation, partnership or trust is no longer eligible to be specially valued, the additional inheritance tax will be imposed on the fair market value of the decedent's interest in the same manner and subject to the same limitations as other property specially valued.

**86.8(17) Audits, assessments and refunds.** Subrules 86.3(1) to 86.3(3) providing for the audit, assessment and refund of the inheritance tax imposed by Iowa Code sections 450.2 and 450.3, shall also be the rules for the audit, assessment and refund of the additional inheritance or Iowa estate tax imposed by Iowa Code section 450B.3 or 451.2.

**86.8(18) Appeals.** Rule 86.4(450) providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance or Iowa estate tax imposed by Iowa Code chapters 450B and 451.

This rule is intended to implement Iowa Code sections 450B.1 to 450B.7 and 451.2.

**701—86.9(450) Market value in the ordinary course of trade.** Fair market value of real or personal property is established by agreement or the appraisal and appeal procedures set forth in Iowa Code section 450.37 and subrules 86.9(1) and 86.9(2). If the value is established by agreement, the agreement may be to accept the values of such property as submitted on the Iowa inheritance tax return, to accept a negotiated value or to accept the values as finally determined for federal estate tax purposes. Values submitted on an inheritance tax return constitute an offer regarding the value of the property by the estate. An inheritance tax clearance that is issued based upon property values submitted on an inheritance tax return constitutes an acceptance of those values on that return. An agreement to accept negotiated values or accept values as finally determined for federal estate tax purposes must be an agreement between the department of revenue, the personal representative, and the persons who have an interest in the property. If an agreement cannot be reached regarding the valuation of real property, then the department may request, within 30 days after the return is filed, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). Effective for estates with decedents dying on or after July 1, 2004, if an agreement cannot be reached regarding the valuation of real property, then the department may request, within 60 days after the return is filed with the department, an appraisal pursuant to Iowa Code sections 450.37 and 450.27 and subrule 86.9(2). If an appraisal is not requested within the required period, then the value listed on the return is the agreed value of the real property. If an agreement cannot be reached regarding the valuation of personal property, the personal representative or any person interested in the personal property may appeal for a revision of the department's value as set forth in

Iowa Code section 450.37 and subrule 86.9(2). Any inheritance tax clearance granted by the department may be subject to revision based on federal audit adjustments. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

**86.9(1)** *In general.* With the exception of real estate which has been specially valued under Iowa Code chapter 450B, property included in the gross estate for inheritance tax purposes must be valued under the provisions of Iowa Code section 450.37 at its market value in the ordinary course of trade. See rule 701—86.10(450) for the rule governing the market value in the ordinary course of trade if the alternate valuation date is elected. “Market value in the ordinary course of trade” and “fair market value” are synonymous terms. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W. 695 (1898). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent’s gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. See federal regulation Section 20.2031-1(b) and Iowa Code section 441.21(1) “b” for similar definitions of fair market value.

*a. Values not to be used.* Other kinds of value assigned to property such as, but not limited to, assessed value of real estate for property tax purposes, cost price, true value, or book value are only relevant in computing the value of the property for inheritance tax purposes, to the extent they may be properly used in the determination of fair market value or special use value. *In re Estate of McGhee*, 105 Iowa 9, 74 N.W.695 (1898). Fair market value cannot be determined alone by agreement between the persons succeeding to the decedent’s property. Also, fair market value cannot be determined alone by setting out in the decedent’s will the price for which property can be sold. *In re Estate of Fred W. Rekers*, Probate No. 28654, Black Hawk County District Court, July 26, 1972.

*b. Date of valuation.* Unless the alternate valuation date is elected under Iowa Code section 450.37, or the tax has been deferred according to Iowa Code sections 450.44 to 450.49, all property includable in the gross estate must be valued at the time of the decedent’s death for the purpose of computing the tax imposed by Iowa Code section 450.2. Subject to the two exceptions listed, any appreciation or depreciation of the value of an asset after the decedent’s death is not to be taken into consideration. *Insel v. Wright County*, 208 Iowa 295, 225 N.W.378 (1929).

**86.9(2)** *Market value—how determined.*

*a. In general.* The fair market value of an item of property, both real and personal, that is included in the gross estate for inheritance tax purposes is expressed in the property’s monetary equivalent. The process used to determine fair market value presupposes the voluntary exchange of the item in a market for its equivalent in money. *Hetland v. Bilstad*, 140 Iowa 411, 415, 118 N.W. 422 (1908). The fact the item of property is not actually sold or exchanged or even offered for sale is not relevant. It is sufficient for establishing the item’s value to arrive at the specific dollar amount that a seller would voluntarily accept in exchange for the property and the amount that a buyer would be willing to pay. *Juhl v. Greene County Board of Review*, 188 N.W.2d 351 (Iowa 1971). It is assumed when determining this specific dollar amount, which is the item’s fair market value, that the seller is desirous of obtaining the highest possible price for the property and that the buyer does not wish to pay more than is absolutely necessary to acquire the property.

The item of property must be valued in a market where it is customarily traded to the public. See federal regulation 20.2031-1(b). Therefore, if an item of property is valued in a market which is not open to the general public, the party asserting the value in the restricted market has the burden to prove by a preponderance of the evidence that the value in the restricted market is the item’s fair market value.

The distinction between a public and a restricted market can be illustrated by the following:

EXAMPLE 1: Under the provisions of the decedent's will, the personal representative of the estate is given the power to sell the decedent's property at either a public or private sale. Pursuant to this power, the personal representative sold the decedent's household goods at public auction held on a specific day and time which was widely advertised both in the newspaper in the locality where the decedent lived and also by sale bills posted in numerous public places in the decedent's community. The household goods sold at auction for \$2,500. The fair market value of the household goods on the day of sale is \$2,500. The public auction is a market where such items are commonly sold and the public had knowledge of the impending sale. The public was also invited to bid and the items to be sold were available for inspection.

EXAMPLE 2. Pursuant to an agreement between the beneficiaries of the estate, the personal representative sold the decedent's household goods and personal effects at an auction where only members of the decedent's family were permitted to bid. The items sold for \$2,500, which may or may not be the fair market value of the property. Family pride, sentiment, and other personal considerations may have entered into the selling price. In this type of sale the burden is on the personal representative to prove that the selling price is the fair market value of the items sold.

*b. Values established by recognized public markets.*

(1) Stocks, bonds, and notes. Items of personal property such as, but not limited to, corporate stock, bonds, mutual funds, notes, and commodities which are traded on one or more of the nation's stock or commodity exchanges shall be valued under the provisions of Federal Estate Tax Regulation 20.2031-2, which regulation is incorporated in and made a part of this subrule by reference.

Individuals who have a registration of a security indicating sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship and not as tenants in common, may obtain a registration in beneficiary form as provided in the uniform transfer on death security registration Act as provided in Iowa Code section 633.800. A "registering entity" under this Act must provide notice to the department of revenue of all reregistrations made pursuant to this Act. Such notice must include the name, address, and social security number of the decedent and all transferees. Until the division of the security, after the death of all the owners, multiple beneficiaries surviving the death of all the owners hold their interest as tenants in common. If no beneficiary survives the death of all the owners, the security belongs to the estate of the deceased sole owner of the estate of the last to die of the multiple owners.

(2) Local elevator and sale barn prices. The fair market value of grain and livestock may be determined either by the quoted price from the grain elevator or sale barn in the community where the grain or livestock is located or by the price quoted from the nearest commodity exchange, less the customary delivery discount.

(3) Public auctions by the court. The fair market value of an item may be established in a public market other than a market which has a permanent location and which holds sales at periodic stated intervals. It is common for estates or the probate court to hold a public auction to sell estate property and if the sale meets certain criteria the selling price received in this type of public auction will establish the fair market value of the property. Factors in an estate or court sale which tend to establish the selling price as one at fair market value include but are not limited to the time and place of the sale were well advertised; the public was invited and encouraged to bid; members of the decedent's family or business associates were not given special consideration as to price or terms of sale; and the terms of sale were comparable to those offered at sales in a regularly established public market.

(4) Sales in a regularly established market. Sales made in a regularly established market pursuant to Iowa Code section 633.387 would qualify as a sale at fair market value for inheritance tax purposes.

*c. Private sales that may establish fair market value.* Private sales of estate assets may establish the fair market value of the item depending on the facts and circumstances surrounding each sale. Factors which tend to establish a private sale as one at fair market value include but are not limited to:

(1) Sales made by a recognized broker who receives a commission from the seller based on the selling price and who has exercised diligence in obtaining a buyer.

(2) Sales made by the personal representative to nonfamily members after a good-faith effort was made to solicit bids from persons who are known to be interested in buying that particular kind of property.

(3) Sales made by the attorney or the personal representative after the item of property was advertised for sale in a newspaper of general circulation or in trade publications and a good-faith effort was made to obtain the best possible price.

(4) Sales made by the personal representative when the sale price is the price quoted on one of the nation's stock or commodity exchanges.

(5) Private sales made by the personal representative to members of the decedent's family or business associates are suspect due to personal, family, or business reasons, but nevertheless may constitute a sale at fair market value, depending on the facts and circumstances surrounding each sale. The personal representative has the burden to establish that this kind of private sale is a sale at fair market value. Factors which have a bearing on whether this type of private sale is one at fair market value include, but are not limited to, the following: Did the decedent's will give a sale or price preference to a member of the decedent's family or business associate? Were the terms of sale more advantageous than terms that would be given to the general public? Was a good-faith effort made to solicit bids from other persons known to be interested in buying that particular kind of property? Was the sale made as part of a family settlement of a will contest or dispute on a claim against the estate?

*d. Fair market value—no regularly established market.*

(1) In general. Certain items of personal property such as, but not limited to, closely held corporate stock, real estate contracts of sale, private promissory notes, accounts receivable, partnership interests, and choses in action are not customarily bought and sold in a public market. Occasional sales of these items of personal property at infrequent intervals do not establish a market for this kind of personal property, but the lack of a regular market does not indicate that the item is of no value. When there is not a regularly established market to use as a reference point for value, it is necessary to create a hypothetical market to determine fair market value. The factors used to create a hypothetical market vary with the kind of property being valued and depend on the facts and circumstances in each individual case.

(2) Fair market value of closely held corporate stock. A closely held corporation is a corporation whose shares are owned by a relatively limited number of stockholders. Often the entire stock issue is held by members of one family or by a small group of key corporate officers. Because of the limited number of stockholders and due to a family or business relationship, little, if any, trading in the shares takes place. There is, therefore, no established market for the stock. Sales that do occur are usually at irregular intervals and seldom reflect all of the elements of a representative transaction as is contemplated by the term fair market value. The term "fair market value" has the same meaning for federal estate tax purposes as it does for Iowa inheritance tax purposes. As a result, the federal revenue rulings establishing the criteria for valuing closely held corporate stock are equally applicable to inheritance tax values. Therefore, corporate stock which meets the standards for being closely held must be valued for inheritance tax purposes under the provisions of Federal Revenue Ruling 59-60, 1959-1 C.B. 237 as modified by Revenue Ruling 65-193, 1965-2 C.B. 370 and amplified by Revenue Ruling 77-287, 1977-2 C.B. 319, Revenue Ruling 80-213, 1980-2 C.B. 101, and Revenue Ruling 83-120, 1983-2 C.B. 170, which Federal Revenue Rulings are incorporated in and made a part of this subrule by reference.

(3) Fair market value of real estate contracts, notes, and mortgages. The fair market value of promissory notes, secured or unsecured, contracts for the sale of real estate, and other obligations to pay money which are included in the gross estate is presumed to be the amount of the unpaid principal plus the amount of interest, if any, accrued to the day of the decedent's death. If the asset is not reported on the return at face value plus accrued interest, the burden is on the party claiming a greater or lesser value to establish that face value plus accrued interest is not the asset's fair market value.

Factors which have a bearing on whether the fair market value of an asset is greater or less than face value include, but are not limited to, the rate of interest charged on the obligation; the length of time remaining on the obligation; the credit standing and payment history of the debtor; the value and nature of the property, if any, securing the obligation; the relationship of the debtor to the decedent; and whether the obligation is to be offset against the debtor's share of the estate. See Iowa Code section 633.471 and *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983). This subrule can be illustrated by the following:

EXAMPLE 1. The decedent at the time of death owned a seller's interest in an installment sale contract for the sale of a 160-acre farm. The contract contained a forfeiture provision in the event the buyer failed to make the payments and further provided that the purchase price was to be paid in 20 equal annual principal payments plus interest at 7 percent per year on the unpaid principal balance. At the time of the decedent's death, the contract of sale had ten years yet to run and the current federal land bank interest rate for farm land loans was 12 percent. Assuming in this example that other valuation factors are not relevant, the fair market value of the contract is the face amount of the contract, plus interest, discounted to reflect a 12 percent interest return on the outstanding principal balance. A prudent investor would not invest at a lower rate of interest when a comparable investment with equal security would earn 12 percent interest.

EXAMPLE 2. A tenant of the decedent owed the decedent \$5,000, which was evidenced by a promissory note, payable on demand, drawing 6 percent interest, and which was executed in 1992, a year prior to the decedent's death. Assuming no other valuation factors are relevant, the fair market value of the \$5,000 promissory note is its face value, plus accrued interest. The less than market interest rate on the note does not affect its fair market value because the note is due on demand and, as a consequence, there is no loss of a higher rate of interest which would be the case if the note specified a future payment date.

EXAMPLE 3. Decedent A died intestate July 1, 1993, survived by two nephews, B and C. The estate consisted, after debts and charges, of \$300,000 in cash and U.S. Government bonds and a noninterest bearing promissory note for \$10,000 executed by nephew B in 1975 for money borrowed for his college education. No payments were ever made on the note. The note is outlawed by the statute of limitations and would be worthless if anyone other than nephew B or C had executed the note. However, since nephew B inherits one-half of A's estate, and is required under the law of setoff and retainer to pay the note before he can participate in the estate, the fair market value of the note in this particular fact situation is \$10,000 because it is collectible in full. Each nephew's share of the estate is \$155,000. Nephew C receives \$155,000 in cash and nephew B receives \$145,000 in cash plus his canceled note for \$10,000. In this example, the statutory right of setoff and retainer supersedes other factors which are relevant in determining the fair market value of the asset. See Iowa Code section 633.471; *In re Estate of Farris*, 234 Iowa 960, 14 N.W.2d 889 (1944); *Indiana Department of Revenue v. Estate of Cohen*, 436 N.E.2d 832 (Ind. App. 1982); *Gearhart's Ex'r and Ex'x v. Howard*, 302 Ky. 709, 196 S.W.2d 113 (1946).

(4) Fair market value of a sole proprietorship or partnership interest. The fair market value of the decedent's interest in a business, whether a partnership or a proprietorship, is the net amount a willing buyer would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. Relevant factors in determining net value include but are not limited to the following: a fair appraisal as of the applicable valuation date of all of the assets of the business, tangible and intangible, including goodwill; the demonstrated earning capacity of the business; and the other factors in rule 701—89.8(422), to the extent they are applicable, that must be considered in valuing closely held corporate stock.

(5) Fair market value of choses in action. The fair market value of the decedent's interest in a right to sue for a debt or a sum of money often cannot be determined with certainty at the time of the decedent's death. The value of this right is dependent on many factors which include, but are not limited to, the following: the strength and credibility of the decedent's evidence; the statutory and case law supporting the decedent's claim or position; the ability of the opposing party to pay a judgment; the extent, if applicable, of the decedent's contributory negligence; and the other normal hazards of litigation. However, this lack of certainty does not mean the right to sue has no value at the time of the decedent's death. Evidence of what was actually received for this right by the decedent's estate or its beneficiary is evidence of the fair market value of the right at death.

This subrule can be illustrated by the following example:

The decedent died in a fire of uncertain origin that destroyed his dwelling. Due to the circumstances surrounding the fire, the estate's right of recovery from the fire insurance carrier was speculative and, therefore, the value of this right at death was unknown. After the estate was closed, the beneficiary of the estate settled the fire insurance claim for \$15,000. The amount received in settlement of the claim

can be considered as evidence of the fair market value of the right of action at death. *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977). In addition, interest on the unpaid tax begins and continues to accrue from the date of the decedent's death.

(6) Wrongful death proceeds are not included in the gross estate. *Estate of Dieleman v. Department of Rev.*, 222 N.W.2d 459 (Iowa 1974).

*e. By agreement between the department, the estate and its beneficiaries.* Iowa Code section 450.37 provides that the market value in the ordinary course of trade is to be determined by agreement between the estate and its beneficiaries and the department. The term "agreement" when used with reference to the value of an asset, whether it is real or personal property, has the same meaning as the term is used in the law of contracts. The agreement between the department, the estate and its beneficiaries may be contained in a single written instrument, or it may be made by an offer submitted by the estate and its beneficiaries and its acceptance by the department. The agreement establishing values for computing the tax may specify that the values as finally determined for federal estate tax purposes on all or a portion of the assets will be the values used in computing the tax.

(1) Offer by the estate and the beneficiaries. It is the duty of the taxpayer to list on the inheritance tax return the values of the assets in the gross estate which the estate and those beneficially entitled to the decedent's property are willing to offer as the values for computing the taxable shares in the estate. The value of the assets listed on the return will constitute an offer for the department to accept or reject. Counteroffers may be made in the event an offer is rejected. This rule applies equally to real and personal property.

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or
3. The department does not request an appraisal within 30 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)"e"(3) for the rule governing values listed as "unknown" or "undetermined." See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

(3) Values listed on the return as "undetermined" or "unknown." If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as "unknown" or "undetermined." The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until 30 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that both the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent's death.

*f. Values established—no agreement.*

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)"e," the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, "real estate or real property" means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In*

*re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in rule 701—86.4(450). If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. See 701—subrule 86.9(2) for additional factors to assist in the determination of fair market value of real property.

(2) Personal property. Effective for estates of decedents dying on or after July 1, 1983. If an agreement is not reached on the value of personal property under 86.9(2) “e,” the estate or any person beneficially receiving the personal property may appeal to the director under Iowa Code section 450.94, subsection 3, for a resolution of the valuation dispute, with the right of judicial review of the director’s decision under Iowa Code chapter 17A.

*g. Amending returns to change values.*

(1) Amendment permitted or required. Unless value has been established by the appraisal or administrative proceedings, the inheritance tax return may be amended by the estate to change the value of an asset listed on the return as long as the amendment is filed before an agreement is made between the estate and the department as to the asset’s value. The return must be amended to list the value of an asset omitted from the original return or to assign a value for an item listed on the original return as “unknown” or “undetermined.”

If the facts and circumstances surrounding the value agreement would justify a reformation or rescission of the agreement under the law of contracts, the return may be amended by the estate, and must be amended at the department’s request, to change the value of the item to its correct fair market value or its special use value as the case may be.

(2) Amendment not permitted. A return cannot be amended:

1. To change the agreed value of an asset, if the facts and circumstances surrounding the agreement would not justify a reformation or rescission of the agreement,

2. To change a real estate value that has been established by the appraisal proceedings under Iowa Code sections 450.31 to 450.33, *Insel v. Wright County*, 208 Iowa 295, 225 N.W. 378 (1929), or

3. To change the value of an item of personal property that has been established by the department’s administrative procedure under 701—Chapter 7, or, if an appeal is taken from the director’s decision, by judicial review under Iowa Code chapter 17A. Provided, in no event may the return be amended to lower the value of an asset that would result in a refund of tax more than three years after the tax became due or one year after the tax was paid, whichever time is the later. Iowa Code section 450.94, *Welp v. Department of Revenue*, 333 N.W.2d 481 (Iowa 1983).

This rule is intended to implement Iowa Code sections 450.27 to 450.37, 450.44 to 450.49, and 633.800 to 633.811.

#### **701—86.10(450) Alternate valuation date.**

**86.10(1) When available.** The alternate valuation date allowed by 26 U.S.C. Section 2032 is available for estates of decedents dying on or after July 1, 1983, on the same terms and conditions which govern the alternate valuation date for federal estate tax purposes. Effective for estates of decedents dying after July 18, 1984, the alternate valuation date cannot be elected unless the value of the gross estate for federal estate tax purposes is reduced and the amount of federal estate tax owing, after all credits have been deducted, has also been reduced. See 26 U.S.C. Section 2032(c) enacted by Public Law 98-369 Section 1023(a). In general, the alternate valuation date is six months after the date of the decedent’s death. If property is sold within the six-month period, the date of sale is the alternate date for valuing the property sold. See federal regulation Section 20.2032-1, as amended December 28,

1972, for the rules governing the valuation of property in the gross estate at its alternate valuation date for federal estate tax purposes. If the election is made, all of the property included in the gross estate and not just a portion of the property, must be valued at the alternate valuation date. The estate may elect both the alternate valuation date and the special use value under Iowa Code chapter 450B, if the estate is otherwise qualified. See Federal Revenue Ruling 83-31(1983). It is a precondition for valuing the property at its alternate value for Iowa inheritance tax purposes that the property has been valued at the alternate value for federal estate tax purposes. However, even if the property in the gross estate is valued at the alternate valuation date for federal estate tax purposes, the estate has the option either to elect or not to elect the alternate valuation date for Iowa inheritance tax purposes. If the alternate valuation date is elected, the value established for federal estate tax purposes shall also be the alternate value for inheritance tax purposes. The election is an affirmative act and for estates of decedents dying prior to July 19, 1984, it must be made on a timely filed inheritance tax return, taking into consideration any extensions of time granted to file the return. Effective for estates of decedents dying after July 18, 1984, the election may be made on the first return filed for the estate, regardless of whether the return is delinquent, providing the return is filed no more than one year after the due date, taking into consideration any extensions of time granted to file the return and pay the tax due. See 26 U.S.C. 2032(d) as amended by Public Law 98-369 Section 1024(a). Failure to indicate on the inheritance tax return whether the alternate valuation date is elected shall be construed as a decision not to elect the alternate valuation date.

**86.10(2) When not available.**

a. The alternate valuation date provided for in 26 U.S.C. Section 2032 cannot be elected by the estate if the tax on a future property interest has been deferred under Iowa Code sections 450.44 to 450.49. The tax on a future property interest must be computed on the fair market value of the future property interest at the time the tax is paid. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W. 2d 469 (1950).

b. Real estate which is subject to an additional inheritance tax imposed by Iowa Code section 450B.3 due to the early disposition or cessation of the qualified use cannot be valued at the alternate valuation date for purposes of the recapture tax, unless the alternate valuation date was originally elected on the return for the decedent's estate.

c. The alternate valuation date cannot be elected if the size of the gross estate for federal estate tax purposes, based on the fair market value of the assets at the time of death, is less than the minimum filing requirements under current federal authority. The fact that the gross estate for inheritance tax purposes is less than the minimum federal estate tax filing requirement is not relevant.

This rule is intended to implement Iowa Code sections 422.3 and 450.37.

**701—86.11(450) Valuation—special problem areas.**

**86.11(1) Valuation of life estate and remainder interests.** In general. Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart*, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983) for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the

value of the life estate for inheritance tax purposes. *In re Estate of Evans*, 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

**86.11(2) Single life estate and remainder.** The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of \$2,000 per acre, or \$320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is .37936; that is, the use of the \$320,000 for life at the statutory rate of return of 4 percent is worth 37.936 percent of the value of the farm. Niece C's remainder factor is .62064. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

<u>Value of B's Life Estate</u>	$\$320,000 \times .37936 = \$121,395.20$
<u>Value of C's Remainder</u>	$\$320,000 \times .62064 = \$198,604.80$
Total Value	\$320,000.00

**86.11(3) Joint and succeeding life estates.** If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans*, 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews, D and E, in equal shares. The 160-acre farm had a fair market value at A's death of \$320,000. Neither the alternate valuation date nor special use value was elected.

COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

- Value of B's Life Estate:  
Life estate factor for age 68 is .37936  
 $\$320,000 \times .37936 =$  \$121,395.20
- Value of C's Succeeding Life Estate  
Life estate factor for age 45 is .67131  
 $\$320,000 \times .67131 =$  \$214,819.20  
Less: B's life estate \$ 121,395.20

Value of C's life estate	\$ 93,424.00
3. <u>Value of D's ½ remainder</u>	
Remainder factor for a life tenant aged 45 is .32869	
as ½ of \$320,000 × .32869 =	\$ 52,590.40
4. <u>Value of E's ½ remainder</u>	
½ of \$320,000 × .32869	\$ 52,590.40
Total Value — life estates and remainders	\$320,000.00

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of \$2,200 per acre, or \$528,000; the alternate value of the farm six months after death was \$2,100 per acre, or \$504,000. Its special use value is \$1,000 per acre or \$240,000. The life estates and the remainder are computed on the basis of the special use value of \$240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. <u>B's share of joint life estate.</u>		
\$240,000 × .59399 (life estate factor, age 52) =	\$142,557.60	
½ as B's share =		\$ 71,278.80
2. <u>C's share of joint life estate.</u>		
\$240,000 × .63966 (life estate factor, age 48) =	\$153,518.40	
Less: ½ value of life estate for B's life	\$ 71,278.80	\$ 82,239.60
3. <u>Value of the remainder.</u>		
The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is .36034, based on C's age of 48.		
<u>D's share of the remainder.</u>		
½ \$240,000 × .36034 =		\$ 43,240.80
<u>E's share of the remainder.</u>		
Same as D's		\$ 43,240.80
Total value of joint life estates and the remainder		\$240,000.00

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth \$71,278.80. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

**86.11(4)** *Fixed sum annuity for life or for a term of years.* The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule 86.7(450). A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger

than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum \$5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is \$2,000 per acre, or \$480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE \$5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule 86.7(450) the 4 percent annuity factor for life at age 54 is 14.245 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

<u>C's Annuity</u>		
\$5,000 × 14.245 =		\$ 71,225
<u>B's Reversionary — Remainder Interest</u>		
Value of farm	\$480,000	
Less: C's annuity	<u>\$ 71,225</u>	<u>\$408,775</u>
Total annuity and reversion — remainder		\$480,000

NOTE: In this example, the \$5,000 annuity is worth less than a life estate in the farm. A life estate would be worth \$273,499.20 because the use of \$480,000 at 4 percent per year would return \$19,200 per year, which is much greater than the \$5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of \$100,000 be set aside from the residuary estate to be held in trust to pay \$500 per month to B for life and upon B's death the remaining principal and income, if any, is to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is 19.048 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is \$6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B's \$6,000 ANNUITY  
 $\$500.00 \times 12 = \$6,000 \times 19.048 = \$114,288$ , which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is \$100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

**86.11(5) Valuation of remainder interests.** Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard*, 251 Iowa 1282, 105 N.W. 2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. If the tax on a remainder or other future property interest is paid within 9 months after the decedent's death (12 months for estates of decedents dying prior to July 1, 1981), the tax is to be based

on the value of the property at the time of the decedent's death (whether it is fair market value or special use value) or the alternate value, 6 months after death, if elected. The age of the life tenant at the time of the decedent's death (the youngest life tenant in case of succeeding or joint life estates), or the term of years specified in the will or trust instrument, must be used to determine the value of the life estate or term estate in computing the tax on the remainder or other future property interests.

*b.* If the tax is paid after nine months from the date of the decedent's death (one year for estates of decedents dying prior to July 1, 1981), but before the termination of the previous life or term estate, the tax on the remainder or other future property interest shall be computed on the fair market value of the property at the time of payment using the life estate or term factor based on the life tenant's age or term of years remaining at the time the tax is paid. Neither the alternate value nor special use value can be used to value the property after nine months from the date of the decedent's death.

*c.* If the tax on the remainder or other future property interest is not paid under paragraphs "a" and "b," the tax must be paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate. In this case, the tax is based on the fair market value of the property and the life estate remainder or term factor corresponding with the time the prior estate is terminated. If the prior estate is terminated due to the death of the life tenant, or due to the expiration of the term of years, the remainder factor is 100 percent of the value of the property. If the prior estate terminates during the life of the life tenant or during the term of years, the tax is computed in the same manner as provided in paragraph "b." If the tax is not paid within nine months (one year for future property interests created prior to July 1, 1981) after the termination of the prior estate, the tax owing is delinquent and is subject to penalty and interest as provided by law. For information regarding interest rate, see 701—Chapter 10. However, in this case the value of the remainder interest is not modified to reflect any change in the fair market value of the property or the life or term estate factor that may occur due to the lapse of time between the due date of the tax and the date the tax is paid.

*d.* Iowa Code section 450.52 provides that the tax may be paid at any time on the present worth of the future property interest. The term "present worth" means the value of the future property interest at the time the tax is paid. Therefore, if the tax on the remainder or other future property interest is not paid within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981), the estate or the beneficiary receiving the future interest cannot pay the tax on a delinquent basis using a value and a life estate or term factor which does not reflect the present worth of the future interest at the time of payment. In this situation, the tax must be computed under paragraph "b" or "c" of this subrule, whichever applies. In this respect, failure to pay the tax within nine months after the decedent's death (one year for future property interests created prior to July 1, 1981) operates as a deferral of the tax on the future property interest. *In re Estate of Dwight E. Clapp*, Probate No. 7251, Clay County Iowa District Court, July 2, 1980.

*e.* If an alternative valuation date is chosen, a liability must be currently owed by the estate to be deductible.

*f.* Tax rates in effect at the date of the decedent's death are the rates applicable for computation of the tax owed. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950).

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in 701—subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, 1993, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was \$2,000 per acre, or \$480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, 1994, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, 1995, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for \$2,100 per acre, or \$504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph "b," when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate

remainder factor reflecting B's age on October 15, 1995, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule 86.7(450) for a life tenant aged 76 is .73595.

<u>C's ½ remainder interest</u>	½ (\$504,000 × .73595) =	\$185,459.40
<u>D's ½ remainder interest</u>	same as C's	<u>185,459.40</u>
Total value of remainder		\$370,918.80

NOTE: In this example, the value of C and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, 1993, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, 1995. The fair market value of the farm was \$2,000 per acre or \$480,000 on July 1, 1993, and \$2,200 per acre or \$528,000 on October 15, 1995. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 86.10(450) and subrule 86.8(4), paragraph "c." A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, 1995, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, 1993. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of \$2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, 1996, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

**86.11(6) Valuation of contingent property interests.** Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, 701—subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E who own the remainder will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives

nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepf*, 258 Iowa 33, 138 N.W.2d 886 (1965).

**86.11(7) Valuation of growing crops owned by the decedent.** Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an “arm’s-length transaction,” then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for \$3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times 2,000 \text{ bushels} \times \$3.10 \text{ per bushel} = \$3,728.10$$

**86.11(8) Valuation of cash rent farm leases.** If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

#### **701—86.12(450) The inheritance tax clearance.**

**86.12(1) In general.** The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate, and also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. Even though the department of revenue has issued an inheritance tax clearance, the tax may be subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. Absent an agreement to the contrary, the six-month extension of the statute of limitations for assessing Iowa inheritance tax based on federal audit adjustments is limited to federal audit adjustments that directly affect Iowa inheritance tax and involve Iowa inheritance tax law that incorporates Internal Revenue Code provisions—see Iowa Code section 450.94(5) and *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

**86.12(2) Limitations on the clearance.** Limitations on the inheritance clearance include, but are not limited to:

*a.* If special use valuation has been elected under Iowa Code chapter 450B, a clearance certifying all inheritance tax has been paid in full, or that no inheritance tax is due, does not extend to any additional inheritance tax that may be imposed under Iowa Code section 450B.3 by reason of the early disposition

or early cessation of the qualified use of the real estate specially valued. Provided, this limitation shall be null and void if:

(1) The real estate specially valued remains in qualified use for the ten-year period after the decedent's death, or

(2) There is an early disposition or early cessation of the qualified use and any additional inheritance tax imposed by Iowa Code section 450B.3 is paid in full.

b. The clearance does not extend to property that is not reported on the return.

c. The clearance does not extend to a fraudulently filed return or a return which misrepresents a material fact.

d. The clearance does not release an underlying tax obligation that remains unpaid, even though a clearance may release the liens imposed by Iowa Code sections 450.7 and 450B.6.

**86.12(3)** *The tax paid in full clearance.* Effective for estates of decedents dying on or after July 1, 1983, the distinction between full payment and partial payment clearances is abolished. For estates of decedents dying on or after July 1, 1983, in which a tax is due, only full payment clearances will be issued. The full payment clearance will be issued only after all the tax, penalty and interest have been paid in full. Provided, if the tax has been paid in full on some, but not all of the shares in the estate, the department will, upon request, issue a full payment clearance limited to those shares on which the tax has been paid in full. The inheritance tax is a separate tax on each share of the estate and not one tax on the estate itself. *In re Estate of Stone*, 132 Iowa 136, 109 N.W. 455 (1906). However, see subrule 86.12(2), paragraph "a," for the limitation on clearances if the estate elected the special use valuation under Iowa Code chapter 450B.

**86.12(4)** *The no tax due clearance.* If no tax is found to be due on any of the shares of the estate, the department will issue a clearance certifying that no tax is due, subject to the limitations in subrule 86.12(2).

**86.12(5)** *Clearance releases the lien.*

a. *In general.* Two inheritance tax liens have been created by statute to secure the payment of an inheritance tax. The lien created by Iowa Code section 450.7 secures the payment of the tax imposed by Iowa Code section 450.3, regardless of whether the tax is based on market value in the ordinary course of trade, the alternate value or special use value. Iowa Code section 450B.6 creates a second lien to secure the additional inheritance tax that may be due by reason of the early disposition or early cessation of the qualified use of special use valuation property.

b. *The section 450.7 lien.* Effective May 20, 1999, a ten-year statutory lien for inheritance tax on all estates is imposed regardless of whether the decedent died prior to or subsequent to July 1, 1995. A lien is imposed for the inheritance tax on all the property of the estate or owned by the decedent for a period of ten years from the date of death of the decedent, unless a remainder or deferred interest is at issue, then the statutory period for the lien may be extended beyond the ten-year limitation to accommodate the term of the interest. For exceptions and additional information, see Iowa Code section 450.7. A tax clearance releases the lien imposed by Iowa Code section 450.7 on all of the property in the gross estate that is reported on the return.

Effective for estates of decedents dying on or after July 1, 1984, if a tax, or additional tax, is found to be due after the issuance of an inheritance tax clearance, the lien under Iowa Code section 450.7 does not have priority against subsequent mortgages, purchases or judgment creditors, unless the department gives notice of the lien by recording the notice in the office of the recorder of the county where the estate is probated, or in the county where the property is located, if the estate has not been administered. As a result, if the department has issued an inheritance tax clearance, an examiner of real estate or personal property titles can rely on this clearance as a release of the inheritance tax lien even though additional tax may be due. This subrule only pertains to the security for the tax under the lien provisions of Iowa Code section 450.7. Other provisions for security for payment of the tax such as judgment liens, mortgages, bonds and distress warrants, are not affected by this subrule. See Iowa Code section 450B.6 and subrule 86.8(15) for the lien for additional tax on property which has been valued at its special use value.

This subrule can be illustrated by the following example:

EXAMPLE: Decedent A died August 15, 1994, a resident of Iowa. By will A devised a 160-acre farm to nephew B and all personal property to niece C. The net estate consisted of the farm with a fair market value of \$2,000 per acre, or \$320,000 and personal property worth \$320,000. On May 24, 1995, the inheritance tax return was filed and tax of \$88,000 (\$44,000 for each beneficiary) was paid. The department issued its unqualified inheritance tax clearance on June 13, 1995. On July 5, 1995, C pledges some corporate stock inherited from A as security for a bank loan. On August 1, 1995, additional personal property was discovered worth \$10,000 ( $\$10,000 \times 15\% = \$1,500$ ) and an amended inheritance tax return was filed without remittance. On August 15, 1995, the department filed an inheritance tax lien for the \$1,500 additional tax plus interest (no penalty was imposed because 90 percent of the tax was timely paid).

In this example, the bank's lien on the pledged corporate stock is superior to the inheritance tax lien under Iowa Code section 450.7, because at the time the stock was pledged (July 5, 1995), the department had not filed its lien for the additional tax owing. Since only C owed additional tax, B's share of the estate was not subject to the lien filed August 15, 1995.

*c. The section 450B.6 lien.* This lien has no application to estates of decedents dying prior to July 1, 1982. In estates of decedents dying on or after July 1, 1982, the lien only applies to the property which has been specially valued under Iowa Code chapter 450B. A clearance certifying full payment of the additional inheritance tax imposed by Iowa Code section 450B.3 releases the lien on the property which was subject to the additional tax. Since the lien imposed by Iowa Code section 450B.6 expires automatically ten years after the decedent's death on property remaining in qualified use during the ten-year period, a tax clearance is not required.

**86.12(6) Distribution of the clearance.** Effective for estates of decedents dying on or after July 1, 1983, only an original inheritance tax clearance will be issued by the department. The personal representative is required to designate on the return who is to receive the clearance. If the return fails to designate a recipient, the clearance will be sent to the clerk of the district court.

Rules 86.9(450) to 86.12(450) are intended to implement Iowa Code chapter 17A and sections 450.1 as amended by 1999 Iowa Acts, chapter 152, section 32, 450.7 as amended by 1999 Iowa Acts, chapter 151, section 45, 450.27 as amended by 1999 Iowa Acts, chapter 152, section 33, and Iowa Code sections 450.5, 450.58, 450.64, 450B.2, 450B.3, 450B.6, 633.477, and 633.479.

**701—86.13(450) No lien on the surviving spouse's share of the estate.** Effective for estates of decedents dying on or after January 1, 1988, no inheritance tax lien is imposed on the share of the decedent's estate passing to the surviving spouse. In addition, effective for estates of decedents dying on or after July 1, 1997, no inheritance tax lien is imposed on the share of the decedent's estate passing to the decedent's parents, grandparents, great-grandparents, and other lineal ascendants, children (including legally adopted children and biological children entitled to inherit under the laws of this state), grandchildren, great-grandchildren, and other lineal descendants and stepchildren.

This rule is intended to implement Iowa Code sections 450.7(1) and 450.12 as amended by 1997 Iowa Acts, Senate File 35.

**701—86.14(450) Computation of shares.** The following areas of the law should be applied when computing the shares of an estate for the purpose of Iowa inheritance tax:

**86.14(1) Right to take against the will.** In the event that a decedent dies with a will, a surviving spouse may elect to take against the will and receive a statutory share in real and personal property of the decedent as designated by statute. If a surviving spouse elects to take against the will, this election nullifies gifts to the surviving spouse set forth in the decedent's will. For details regarding this election and statutory share, see Iowa Code sections 633.236 to 633.259 and *In the Matter of Campbell*, 319 N.W.2d 275, 277 (Iowa 1982).

**86.14(2) Family settlements.** Beneficiaries of an estate may contract to divide real or personal property of the estate, or both, in a manner contrary to the will of the decedent. The court of competent jurisdiction may approve the settlement contract of the beneficiaries. However, the department is not a party to the contract and is not bound to compute the shares of the estate based on the settlement

contract. Instead, the department must compute the shares of the estate based upon the terms of the decedent's will, unless a court of competent jurisdiction determines that the will should be set aside. See *In re Estate of Bliven*, 236 N.W.2d 366 (Iowa 1975).

**86.14(3) Order of abatement.** Shares to be received by the beneficiaries of an estate are subject to abatement for the payment of debts, charges, federal and state estate taxes in the order as provided in Iowa Code section 633.436.

**86.14(4) Contrary order of abatement.** An order of abatement contrary to that provided in Iowa Code section 633.436 is provided by statute. For instance, if a provision of a will, trust or other testamentary instrument explicitly directs an order of abatement contrary to Iowa Code section 633.436 or a court of competent jurisdiction determines order of abatement due to a devise that would result in an order of abatement contrary to Iowa Code section 633.436, then the order of abatement indicated is to be followed. For additional information regarding contrary provisions of abatement, see Iowa Code section 633.437. For details regarding marital share and contrary order of abatement see, Estate of Lois C. Olin, Docket No. 92-70-1-0437, Letter of Findings (June 1993).

**86.14(5) "Stepped-up" basis.** If a decedent's will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a "stepped-up" basis will be utilized when computing the shares which will result in the appropriate beneficiaries' shares to include the tax obligation that was paid as an additional inheritance. A "stepped-up" basis is based on gifts prior to the residual share.

EXAMPLE: Decedent's will gives \$1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax:  $\$1,000 \times 10\% = \$100$ . Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example):  $\$100 \text{ divided by } 90\% = \$111.11$ . Add the stepped-up tax of \$111.11 to the original bequest of \$1,000. This results in a stepped-up share of \$1,111.11, which allows the nephew to keep \$1,000 after the tax is paid.

**86.14(6) Antilapse provision and the exception to the antilapse statute.** Iowa Code sections 633.273 and 633.274 set forth guidance on the allocation of property in situations in which a lapse in inheritance may occur. Iowa Code section 633.273 provides that when a devisee predeceases a testator, the issue of the devisee inherits the property, per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary. However, Iowa Code section 633.274 is an exception to Iowa Code section 633.273. If the spouse of the testator predeceases the testator, the inheritance shall lapse, unless the terms of the will clearly and explicitly provide to the contrary. For details regarding the provisions, please see the cited statutes.

**86.14(7) Disclaimer.** A person who is to succeed to real or personal property may refuse to take the property by executing a binding disclaimer which relates back to the date of transfer. Unless the transferor of the property has otherwise provided, disclaimed property passes as if the disclaimant has predeceased the transferor. To be valid, a disclaimer must be in writing and state the property, interest or right being disclaimed, the extent the property, right, or interest is being disclaimed, and be signed and acknowledged by the disclaimant. The disclaimer must be received by the transferor or the transferor's fiduciary not later than nine months after the later of the date in which the property, interest or right being disclaimed was transferred or the date the disclaimant reaches 18 years of age. A disclaimer is irrevocable from the date of its receipt by the transferor or the transferor's fiduciary. For additional details regarding disclaimers, please see Iowa Code Supplement chapter 633E.

Effective for estates with decedents dying on or after July 1, 2004, disclaimers are to be filed in compliance with the Iowa uniform disclaimer Act, Iowa Code Supplement chapter 633E. This Act sets forth new requirements for valid disclaimers. Criteria will be based on the type of property or the interest being disclaimed. General criteria for disclaimers have not changed. To be valid, a disclaimer must be in writing or be stored in electronic record or other medium that is retrievable, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be filed. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest in property of the estate.

A disclaimer becomes irrevocable when it is delivered, filed, or when it becomes effective, whichever occurs later. Delivery of a disclaimer may generally be made by personal delivery, first-class mail, or any other method likely to result in its receipt. However, specific interests being disclaimed require specific means of delivery. For explicit information regarding delivery of a disclaimer based on interest being disclaimed, see Iowa Code Supplement section 633E.12.

**86.14(8) *Right of retainer.*** If a distributee of an estate is indebted to the estate, whether the decedent dies testate or intestate, the personal representative has the right to offset the distributee's share in the estate against the amount owed to the estate by the distributee. For additional information regarding this right of offset and retainer, see Iowa Code section 633.471.

**86.14(9) *Deferred life estates and remainder interest.*** A deferred estate generally occurs as the result of a decedent granting a life estate in property to one person with remainder of the property to another. In such cases, the determination of the tax on the remainder interest to be received by the remainderman may be deferred until the determination of the previous life estate pursuant to Iowa Code section 450.46. Tax on a remainder interest that has been deferred is valued pursuant to Iowa Code section 450.37, with no reduction based on the previous life estate. Tax due on a deferred interest must be paid before the last day of the ninth month from the date of the death of life tenant pursuant to Iowa Code section 450.46. Penalty and interest is not imposed if the tax is paid before the last day of the ninth month from the date of the death of life tenant. If the death of the decedent occurred before July 1, 1981, the tax due on a deferred interest must be paid before the last day of the twelfth month from the date of the death of life tenant. Deferment may be elected due to the fact that the remainder interest is contingent and because the value of the remainder interest may be significantly altered from the time of the decedent's death until the death of the life tenant. A request for deferment may be made on a completed department form and the completed form, with any required documentation, may be filed with the department on or before the due date of the inheritance tax return. Failure to file a completed department form requesting a deferral of tax on the remainder interest with the inheritance tax return will allow the department to provide an automatic deferral for qualifying remainder interests.

If deferral is chosen, an inheritance tax clearance cannot be issued for the estate. Expenses cannot be used to offset the value of the deferred remainder interest. Based upon Iowa Code section 450.12, deductible expenses must be expenses paid by the estate. Expenses incurred by a deferred remainder interest would not qualify based on Iowa Code section 450.12 as deductible expenses. Pursuant to Iowa Code section 450.52, the owner of a deferred remainder interest may choose to pay the tax on the present value of the remainder interest and have the lien on such an interest removed prior to the termination of the previous life estate. If early termination of the deferred remainder interest occurs, the value of the remainder interest will be reduced by the value of remaining previous life estate.

If the tax on an estate is deferred, a bond may have to be filed with the proper clerk of the district court. This bond must remain effective until the tax on the deferred estate is paid. Failure to maintain or properly renew the bond will result in the bond's being declared forfeited, and the amount collected. For additional details regarding obtaining a bond, see Iowa Code sections 450.49 and 450.50.

**86.14(10) *Credit on prior transfers.*** A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

*a.* The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

*b.* The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the earlier estate. This means that the tax in the current estate must be

apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

This rule is intended to implement Iowa Code chapter 450, Iowa Code Supplement chapter 633E, and 2005 Iowa Acts, chapter 38.

**701—86.15(450) Applicability.** Any references made within Chapter 86 of these rules to Iowa Code chapter 451, Iowa Estate Tax; and to Chapter 87 of these rules, Iowa Estate Tax; are applicable only for deaths that occurred prior to July 1, 2008.

This rule is intended to implement 2008 Iowa Acts, Senate File 2350, section 37.

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◊ Two or more ARCs

CHAPTER 89  
FIDUCIARY INCOME TAX  
[Formerly fiduciary rules ch 48, See IAB 9/30/81]  
[Prior to 12/17/86, Revenue Department[730]]

**701—89.1(422) Administration.**

**89.1(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, estate, generation skipping transfer, 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.

**89.1(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.

**701—89.2(422) Confidentiality.**

**89.2(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.

**89.2(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.

**89.2(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.

**89.2(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.

#### **701—89.3(422) Situs of trusts.**

**89.3(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.

**89.3(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.

**89.3(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 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 the trust's income only for the period during the tax year at issue when the trust had its situs in Iowa, and all Iowa source income for the tax year at issue, regardless of the situs of the trust. After the previous computation has been completed, then all of the trust's income for the tax year at issue, regardless of the source of the income, is to be reported by completing Schedule C. After Schedule C is completed, then lines 33 through 36 on the first page of the form must be completed to determine the Iowa fiduciary tax due.

This rule is intended to implement Iowa Code sections 422.6, 422.8, and 422.14.

#### **701—89.4(422) Fiduciary returns and payment of the tax.**

**89.4(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.

**89.4(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.

**89.4(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.

**89.4(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.

**89.4(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).

#### **89.4(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.

**89.4(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.

**89.4(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 legal holiday, the due date is the next day which is not a Saturday, Sunday or legal holiday as defined in Iowa Code section 4.1. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule 89.6(422).

**89.4(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. Withholding agent—general rule.* The personal representative of a decedent's estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to

beneficiaries who are nonresidents of Iowa. This withholding requirement applies to both Iowa and non-Iowa situs estates and trusts. See Iowa Code subsection 422.16(12) and 701—subrule 46.4(2), item “5,” for the duty to withhold. The amount of income tax to be withheld shall be computed either based on 5 percent of the taxable Iowa income distributed or according to tax tables provided by the department. See 701—subrule 46.3(3) for the required withholding form and return to be filed with the department.

*e. Exception to the general rule.* If a nonresident beneficiary of an estate or trust who is to receive a distribution of Iowa taxable income files with the department a nonresident declaration of estimated tax and pays the estimated tax on the income declared in full, 89.4(9) “d” does not apply to the amount of the income declared. A certificate of release from the duty to withhold will be issued to the withholding agent upon request. See Iowa Code sections 422.16(12) and 422.17 and 701—subrule 46.4(3) relating to the release certificate. In addition, an estimated payment of withholding can occur if a distribution is being made to a taxable beneficiary. An estimated payment of withholding should be based on 5 percent of the taxable Iowa income. It is the department’s policy to allow estimated payments of withholding to be paid directly to the department.

*f. Withholding not required.* Withholding is not required from the distribution made by estates and trusts of Iowa taxable income to beneficiaries who are residents of Iowa.

*g. 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.

*h. Liability of a withholding agent.* A withholding agent is personally liable for the amount of the tax required to be withheld under Iowa Code subsection 422.16(12) if the income tax liability of a nonresident beneficiary which is attributable to the distribution is not paid and, in addition, is personally liable for any penalty and interest due if the tax required to be withheld is not paid to the department within the time prescribed by law. See rules 701—44.1(422) to 44.4(422) for the application and computation of penalty and interest on income tax required to be withheld.

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.

#### **701—89.5(422) Extension of time to file and pay the tax.**

##### **89.5(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).

**89.5(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.

**89.5(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.

**89.5(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.

**701—89.6(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]

**701—89.7(422) Interest or refunds on net operating loss carrybacks.**

**89.7(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).

**89.7(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.

**89.7(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]

**701—89.8(422) Reportable income and deductions.**

**89.8(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.

**89.8(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).

**89.8(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.

**89.8(4) Reportable income in general—foreign situs estates and trusts.** Estates and trusts with a situs outside Iowa must report only that portion of income which is derived 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.

Foreign situs estates and trusts must report income from intangible personal property, such as annuities, interest on bank deposits and dividends, but only to the extent the income is derived from a business, trade, profession or occupation carried on in Iowa.

**89.8(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.

**89.8(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).

**89.8(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.* For sales and exchanges occurring after June 18, 1980, 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 tax withholding, unless the gain has been previously accumulated and any tax due paid. See 89.4(9)“d” and 701—subrule 46.4(2), item “5,” for the duty to withhold Iowa income tax from 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 must be prorated on the basis the Iowa gross income subject to tax bears to the total gross income subject to federal income tax.
4. Federal income tax owed by a nonresident decedent at the time of death must be prorated on the basis the Iowa income included in the federal adjusted gross income bears to the total federal adjusted

gross income. See 701—subrule 41.3(4) for prorating 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.

**89.8(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. The federal income tax liability of a nonresident decedent must be prorated for tax years on or before December 31, 1981. 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.

See 89.8(7) "t" for the proration of federal income tax for foreign situs estates and trusts. In addition, foreign situs estates and trusts are not allowed a deduction from Iowa gross income for real and personal property taxes paid on property located outside Iowa.

*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 federal regulations 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. For estates and trusts not required to file a federal estate tax return, an item is deductible for both Iowa inheritance tax and Iowa income tax purposes.

2. Estates and trusts required to file a federal estate tax return can always 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 for Iowa income tax purposes 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 for income tax purposes.

This rule 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. Estates and trusts with a situs outside Iowa are allowed a deduction only for federal estate tax paid on income in respect of a decedent from Iowa sources.

**89.8(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.

**89.8(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.

**89.8(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. To be eligible for the credit, the income must have been includable for income tax purposes both in Iowa and the other state or foreign country. The credit allowable against the Iowa tax is limited to the lesser of: (1) the tax paid to the other state or foreign country on the income, or (2) the Iowa income tax paid on the foreign source income. The Iowa income tax paid on the foreign source income is computed by multiplying the Iowa computed tax, less the personal exemption credit, by a fraction of which the foreign source income included in the Iowa gross income is the numerator and the total Iowa gross income is the denominator. The resulting amount is the Iowa tax paid on foreign source income. Any tax paid to another state or foreign country in excess of the Iowa credit allowable is not refundable. 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. This rule is illustrated by the following example:

Decedent A died a resident of Webster City, Iowa, on February 15, 1997. 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, 1997, A's estate had the following income and expenses:

Interest	\$ 5,000
Dividends	7,500
Iowa farm income	20,000
Missouri farm income	<u>10,000</u>
Iowa gross income	\$ 42,500
Less allowable deductions	<u>8,000</u>

Iowa taxable income	\$ 34,500
Iowa computed tax	\$2,587.87
Less personal credit	<u>40.00</u>
Tax subject to credit for foreign taxes paid	\$2,547.87
Less credit for tax paid Missouri	<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. The Iowa tax 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 credit for taxes paid the state of Missouri is \$413.00, because it is less than the Iowa tax paid on the Missouri income. If the Missouri tax paid had been greater than the Iowa tax on the Missouri income, the allowable credit would have been the Iowa tax on the Missouri income.

See 701—subrule 42.6(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.

*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.

This rule is intended to implement Iowa Code sections 422.3 to 422.9, 422.12, 422.14, 422.23, 633.471 and chapter 452A.

[ARC 8702B, IAB 4/21/10, effective 5/26/10]

**701—89.9(422) Audits, assessments and refunds.** Rules 701—43.1(422) to 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.

**701—89.10(422) The income tax certificate of acquittance.**

**89.10(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.

**89.10(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.

**89.10(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 withhold income tax on distributions to nonresident beneficiaries. In the case of an estate, the income tax liability of the decedent for both 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.

**89.10(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.

**89.10(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.

**701—89.11(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 103  
STATE-IMPOSED AND LOCALLY IMPOSED HOTEL AND  
MOTEL TAXES—ADMINISTRATION  
[Prior to 12/17/86, Revenue Department[730]]

**701—103.1(423A) Definitions, administration, and imposition.**

**103.1(1) Definitions.** For the purposes of this chapter and 701—Chapters 104 and 105, unless the context otherwise requires:

“*Department*” means the department of revenue.

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

“*Lessor*” means any person engaged in the business of renting lodging to users. “Lessor” is synonymous with the word “retailer.”

“*Locally imposed tax*” means the hotel and motel tax levied by Iowa Code section 423A.4.

“*Lodging*” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals.

“*Person*” means the same as the term is defined in rule 701—211.1(423).

“*Renting*” or “*rent*” means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

“*Sales price*” means the amount of consideration for renting of lodging and means the same as the term is defined in rule 701—211.1(423).

“*State-imposed tax*” means the hotel and motel tax levied by Iowa Code section 423A.3.

“*Tax*” or “*hotel and motel tax*” means either the state-imposed or locally imposed hotel and motel tax levied by Iowa Code sections 423A.3 and 423A.4, respectively.

“*User*” means a person to whom lodging is rented.

All other words and phrases used in this chapter and 701—Chapters 104 and 105 and defined in rule 701—211.1(423) have the meaning set forth in that rule for the purposes of these chapters.

**103.1(2) Administration.** The department is charged with the administration of the tax, subject to the rules, regulations, and direction of the director. The department is required to administer the tax as nearly as possible in conjunction with the administration of the state sales tax except that portion of the law which implements the streamlined sales and use tax agreement. Therefore, the term “retailer” will be used interchangeably between the two taxes.

**103.1(3) Imposition.** A state-imposed tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The state-imposed tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4.

**103.1(4)** A city or county may impose by ordinance of the city council or by resolution of the county board of supervisors a tax on lodging, at a rate not to exceed 7 percent, which shall be imposed in increments of one or more full percentage points upon the sales price from the renting of lodging. When imposed by a city, the tax shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county.

This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.2(423A) Statute of limitations, supplemental assessments and refund adjustments.** Within three years after a return is filed, the department shall examine it, determine the tax due, and give notice of assessment to the taxpayer. If no return has been filed, the department may determine the tax due and give notice thereof. If such determination is based upon an examination of books, papers, records, or memoranda, such an examination will not include any transactions completed three years or more prior to such examination.

Whenever books and records are examined by an employee designated by the director, whether to verify a return or claim for refund or in making an audit, an assessment must be issued within one year from the date of the completion of the examination. If not, the period for which the books and records were examined becomes closed and no assessment can be made. In no case is the one-year period of limitation an extension of or in addition to the three-year period of limitation.

The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.8(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in such appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 423.37 and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—103.3(423A) Credentials and receipts.** Employees of the department have official credentials, and the retailer should require proof of the identity of persons claiming to represent the department. No charges shall be made or gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the retailer should require the employee to issue an official receipt. Such receipt shall show the retailer's name, address and permit number; the purpose for the payment; and the amount of the payment. The retailer should retain all receipts, and only official receipts for payment will be recognized by the department.

This rule is intended to implement Iowa Code sections 422.68(1) and 422.70 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.4(423A) Retailers required to keep records.** Every retailer shall keep and preserve the following records:

1. A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.
2. A record of all deductions and exemptions taken in filing a tax return.

The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time.

Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review, district court, or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.5(423A) Audit of records.** The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purposes of verifying the correctness of a return filed or estimating the tax liability of any retailer. The right

to examine records includes the right to examine copies of the retailer's state and federal income tax returns. When a retailer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the retailer and any other witness whom the department deems necessary or expedient to examine and compel the retailer and witness to produce books, papers, records, memoranda or documents relating in any manner to the tax.

The department shall have the obligation to inform the retailer when an examination of the retailer's books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

This rule is intended to implement Iowa Code sections 422.70 and 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

### **701—103.6(423A) Billings.**

#### **103.6(1) Notice of adjustments.**

*a.* An employee of the department, designated by the director to examine returns or make audits, who discovers discrepancies in returns or learns that a sales price subject to the tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of the discovery by ordinary mail. The notice shall not be termed an assessment. It merely informs the person what amount would be due if the information discovered is correct.

*b.* Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, the person should then file a claim for refund. However, payment will not be required until a certified assessment has been made (although interest will continue to accrue on any amount of tax which is determined to be due if payment is not made). If no payment is made, the person may discuss with the employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which the person considers relevant to the situation. This person may also ask for a conference with the department. Documents and records supporting the person's position may be requested.

*c.* Power of employee to compromise tax claim. Only the director has the power to compromise any tax claims. The power of the employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

**103.6(2) Notice of assessment.** If, after following the procedure outlined in paragraph 103.6(1) "b," no agreement is reached and the person does not pay the amount determined to be correct within 20 days, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.8(17A) and Iowa Code section 423.37, proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by such appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice. See rule 701—7.8(17A).

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—103.7(423A) Collections.** If determined expedient or advisable to do so, the director may enforce the collection of the tax liability which has been determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of the tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

This rule is intended to implement Iowa Code sections 422.70, 423.37, and 423.39 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.8(423A) No property exempt from distress and sale.** The provisions of Iowa Code section 422.26 apply with respect to a tax liability determined to be due by the department. The department shall proceed to collect the tax liability after it has become delinquent; and no property of the taxpayer is exempt from the process whereby the tax is collected.

This rule is intended to implement Iowa Code sections 422.26 and 423.42 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.9(423A) Information confidential.** When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. The director may also authorize the examination of returns filed by a retailer by (1) other officers of the state of Iowa, (2) tax officers of another state if a reciprocal arrangement exists, or (3) tax officers of the federal government if a reciprocal arrangement exists. The director is also empowered to publish annual statistical reports relating to the operation of the tax. See rule 701—6.3(17A).

All other information obtained by employees of the department in the performance of their official duties is confidential as provided by law and cannot be disclosed.

This rule is intended to implement Iowa Code section 422.72 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.10(423A) Bonding procedure.** The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount which the director may fix, or in lieu of such bond, securities approved by the director in an amount which the director may prescribe.

The determination of when and in what amount a bond is required will be determined pursuant to rule 701—11.10(422). The bond required under this rule and rule 701—11.10(422) shall be a single requirement with the amount to be determined with reference to both the potential state-imposed tax (see 701—Chapter 241) and the locally imposed tax liabilities, plus any applicable local option taxes. Whether or not the person required to post the bond files a monthly deposit for state-imposed tax purposes, the basis for determining the locally imposed tax portion of the bond shall be an amount sufficient to cover nine months or three quarters of tax liability.

This rule is intended to implement Iowa Code section 423.35 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.11(423A) Sales tax.** The hotel and motel tax is levied in addition to the state sales tax imposed in Iowa Code chapter 423. Additionally, the director of revenue is required to administer the hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law except that portion of the law which implements the streamlined sales and use tax agreement. See 701—Chapters 12 to 14 for details. The computation of the tax shall be based on the sales price of the room excluding the sales tax.

This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3, 423A.4, and 423A.6.

**701—103.12(423A) Judicial review.** Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act in a manner similar to that provided for review of sales tax matter. See 701—Chapter 7 for details.

This rule is intended to implement Iowa Code section 423.38 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

**701—103.13(423A) Registration.** All persons who are required to collect and remit the locally imposed tax are required to register with the department as a hotel and motel tax collector.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.6.

**701—103.14(423A) Notification.** Before a city's or county's local option hotel and motel tax can become effective, be revised, or be repealed, 45 days' notice of such action must be given to the director in writing by mail.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4.

**701—103.15(423A) Certification of funds.** Within 45 days after the date that the quarterly returns and payments are due, the director will certify to the treasurer of state the amount of locally imposed tax to be transferred from the general fund to the local transient guest tax fund which is to be distributed to each city and county which has adopted the tax. Payments received after the date of certification will remain in the general fund until the next quarterly certification.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.7.

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CHAPTER 104  
HOTEL AND MOTEL—  
FILING RETURNS, PAYMENT OF TAX, PENALTY, AND INTEREST  
[Prior to 12/17/86, Revenue Department[730]]

**701—104.1(423A) Returns, time for filing.** On the quarterly sales tax return, every retailer shall report the gross sales subject to the hotel and motel tax for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. The information required for the computation of the hotel and motel tax liability shall be separate from that required for the computation of the retail sales tax liability. Such information and computation must be stated and computed separately, even though the total tax liability may be paid with a single remittance.

The quarterly reports are due on the last day of the month following the end of the calendar quarter during which the tax is collected. If a person is required to collect the hotel and motel tax and file a monthly deposit for retail sales tax purposes, the monthly deposit should not include the hotel and motel tax collected during the period covered by the deposit.

When the due date falls on a Saturday, Sunday or legal holiday, the return is due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mail, properly addressed and 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 Sales and Use Tax Processing, Department of Revenue, Hoover State Office Building, P.O. Box 10412, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 421.14 and 423.31 and 2005 Iowa Code Supplement section 423A.6.

**701—104.2(423A) Remittances.** The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and sales tax permit number of the sender and amount of tax for the quarterly remittance shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the retailer; and, when feasible, every retailer shall use them when completing and mailing the return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

This rule is intended to implement Iowa Code section 423.31 and 2005 Iowa Code Supplement section 423A.6.

**701—104.3(423A) Permits.** An Iowa sales tax permit will be required under this chapter. However, the director may require all persons responsible for collecting and remitting a hotel-motel tax to register with the department.

Any person not in the business of renting rooms to transient guests, but who regularly rents rooms or residences at varying locations to transient guests, may register once under this chapter.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.6.

**701—104.4(423A) Sale of business.** A retailer subject to the provisions of the Iowa Code relating to the hotel and motel tax who sells the business shall file a return within the month following the sale and pay all tax due. Any unpaid tax is due prior to the transfer of title of any personal property to the purchaser and, if unpaid, becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain records for a period of three years from the date of discontinuing business unless a release from the provision is given in writing by the department.

This rule is intended to implement Iowa Code sections 422.51(2), 422.52, 423.31, and 423.33 and 2005 Iowa Code Supplement section 423A.6.

**701—104.5(423A) Bankruptcy, insolvency or assignment for benefit of creditors.** In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 423.31(6) and 2005 Iowa Code Supplement section 423A.6.

**701—104.6(423A) Claim for refund of tax.** Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer to collect the tax as an agent for purposes of receiving a refund of tax. Anyone claiming a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department within three years from the date the tax became due or one year from the date of payment, whichever is later, stating in detail the reasons and facts and, if necessary, attaching supporting documents on which the claim for refund is based. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 423.47 and 2005 Iowa Code Supplement section 423A.6.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—104.7(423A) Application of payments.** Since a combined hotel and motel tax and quarterly state sales tax return is utilized by the department, all payments received with the return will be applied to satisfy state sales tax and hotel and motel tax liabilities, which include penalty and interest. Application of partial payments received with the tax return and any subsequent partial payment received for that tax period will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2)“d.” The denominator in the ratio shall be the total of the hotel and motel tax due and the state sales tax due less any monthly sales tax deposits. The numerators in the ratio formula shall be the amounts of hotel and motel tax due and the net state sales tax due.

EXAMPLE: XYZ hotel owes a total of \$1,000 in net state sales tax and hotel and motel tax for the quarter. Of the \$1,000 owed, \$600 is for hotel and motel tax and \$400 is for state sales tax. XYZ files its quarterly sales tax return accompanied by a \$500 partial payment. The \$500 partial payment would be applied based on the following computation:

$$\frac{600}{1000} \times 500 = \$300 \text{ Hotel and motel tax}$$

$$\frac{400}{1000} \times 500 = \$200 \text{ State sales tax}$$

All revenues received under Iowa Code chapter 423A are to be credited to the “local transient guest tax fund.” Revenues include all interest and penalties applicable to any hotel and motel tax report or remittance, whether resulting from delinquencies or audits. All revenues received or moneys refunded 180 days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund. The 180-day limitation applies to actual receipts or disbursements and not to accrued but unpaid tax liabilities or potential refunds.

This rule is intended to implement 2005 Iowa Code Supplement section 423A.7.

**701—104.8(423A) Interest and penalty.**

**104.8(1) Penalties.** See rule 701—10.6(421) for the calculation of penalty for tax periods beginning on or after January 1, 1991.

**104.8(2) Interest.** Tax not paid by the due date of the return shall draw 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).

This rule is intended to implement Iowa Code section 423A.6.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—104.9(423A) Request for waiver of penalty.** See rule 701—10.6(421) for the statutory provisions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 423A.6.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—104.10(423A) Extension of time for filing.** Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 423.31 and 2005 Iowa Code Supplement section 423A.6.

**701—104.11(421,423A) Personal liability of corporate officers and partners for unpaid tax.** If a retailer fails to pay hotel or motel tax due, any officer of a corporation or association or any partner of a partnership who has control of, supervision of, or the authority for remitting the hotel or motel tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax. Rule 701—12.15(422,423) describes this liability in more detail. The statements of the rule are made with reference to sales tax, but are also applicable to personal liability for hotel and motel tax.

This rule is intended to implement Iowa Code section 421.26 and 2005 Iowa Code Supplement chapter 423A.

**701—104.12(421,423A) Good faith exception for successor liability.** For taxes due and unpaid, an immediate successor's liability for unpaid hotel and motel tax is extinguished if the immediate successor can show that its purchase of the business owing the tax was done "in good faith." See rule 701—12.14(422,423) for a detailed analysis of immediate successor liability and the "good faith" exception to that liability.

This rule is intended to implement Iowa Code section 421.28 and 2005 Iowa Code Supplement chapter 423A.

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**SECRETARY OF STATE[721]**DIVISION I  
ADMINISTRATION

## CHAPTER 1

## DESCRIPTION OF ORGANIZATION

1.1(17A)	Central organization
1.2(17A)	Corporations
1.3(17A)	Uniform Commercial Code
1.4(17A)	Elections
1.5(17A)	Land office
1.6(17A)	Notaries public
1.7(17A)	Legislative division—enrolled bills
1.8(17A)	Process agent
1.9(17A)	Oaths and bonds
1.10(17A)	Joint governmental agreements
1.11	Reserved
1.12(17A)	Judiciary

## CHAPTER 2

## RULES OF PRACTICE

2.1(17A)	Forms used
2.2(17A)	Filing complaints
2.3(17A)	Payment for services
2.4(17A)	Examination and preservation of records
2.5(17A)	Telecopier service

## CHAPTER 3

## ADMINISTRATIVE HEARINGS

3.1(17A)	Scope
3.2(17A)	Definitions
3.3(17A)	General information
3.4(17A)	Commencing the contested case
3.5(17A)	Notice of hearing
3.6(17A)	Contested case hearing procedures
3.7(17A)	Presiding officer
3.8(17A)	Decisions
3.9(17A)	Request for rehearing
3.10(17A)	Judicial review

## CHAPTER 4

## FORMS

4.1(17A)	Forms and instructions
4.2(17A)	Corporation forms
4.3(17A)	Election forms
4.4(17A)	Uniform Commercial Code forms
4.5(17A)	Verified lien statement forms
4.6(9A,17A)	Athlete agent

CHAPTER 5  
PUBLIC RECORDS AND  
FAIR INFORMATION PRACTICES  
(Uniform Rules)

5.1(17A,22)	Definitions
5.3(17A,22)	Requests for access to records
5.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
5.9(17A,22)	Disclosures without the consent of the subject
5.10(17A,22)	Routine use
5.11(17A,22)	Consensual disclosure of confidential records
5.12(17A,22)	Release to subject
5.13(17A,22)	Availability of records
5.14(17A,22)	Personally identifiable information
5.15(17A,22)	Personnel files
5.16(17A,22)	Other groups of records

CHAPTER 6  
Reserved

CHAPTER 7  
AGENCY PROCEDURE FOR RULE MAKING

7.1(17A)	Applicability
7.2(17A)	Advice on possible rules before notice of proposed rule adoption
7.3(17A)	Public rule-making docket
7.4(17A)	Notice of proposed rule making
7.5(17A)	Public participation
7.6(17A)	Regulatory analysis
7.7(17A,25B)	Fiscal impact statement
7.8(17A)	Time and manner of rule adoption
7.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
7.10(17A)	Exemptions from public rule-making procedures
7.11(17A)	Concise statement of reasons
7.12(17A)	Contents, style, and form of rule
7.13(17A)	Agency rule-making record
7.14(17A)	Filing of rules
7.15(17A)	Effectiveness of rules prior to publication
7.16(17A)	General statements of policy
7.17(17A)	Review by agency of rules

CHAPTER 8  
PETITIONS FOR RULE MAKING

8.1(17A)	Petition for rule making
8.2(17A)	Briefs
8.3(17A)	Inquiries
8.4(17A)	Agency consideration

CHAPTER 9  
DECLARATORY ORDERS

9.1(17A)	Petition for declaratory order
9.2(17A)	Notice of petition
9.3(17A)	Intervention
9.4(17A)	Briefs

9.5(17A)	Inquiries
9.6(17A)	Service and filing of petitions and other papers
9.7(17A)	Consideration
9.8(17A)	Action on petition
9.9(17A)	Refusal to issue order
9.10(17A)	Contents of declaratory order—effective date
9.11(17A)	Copies of orders
9.12(17A)	Effect of a declaratory order

#### CHAPTER 10

##### WAIVER AND VARIANCE RULES

10.1(17A)	Definition
10.2(17A)	Scope of chapter
10.3(17A)	Applicability
10.4(17A)	Criteria for waiver or variance
10.5(17A)	Filing of petition
10.6(17A)	Content of petition
10.7(17A)	Additional information
10.8(17A)	Notice
10.9(17A)	Hearing procedures
10.10(17A)	Ruling
10.11(17A)	Public availability
10.12(17A)	Summary reports
10.13(17A)	Cancellation of a waiver
10.14(17A)	Violations
10.15(17A)	Defense
10.16(17A)	Judicial review

#### CHAPTERS 11 to 19

Reserved

DIVISION II  
ELECTIONS

#### CHAPTER 20

##### DEPUTY COMMISSIONERS OF ELECTIONS

20.1(47)	Deputy secretary of state and deputy county auditor to act
20.2(47)	County commissioner of elections may appoint special deputies

#### CHAPTER 21

##### ELECTION FORMS AND INSTRUCTIONS

DIVISION I

GENERAL ADMINISTRATIVE PROCEDURES

21.1(47)	Emergency election procedures
21.2(47)	Electronic submission of absentee ballot applications and affidavits of candidacy
21.3(49,48A)	Voter identification documents
21.4(49)	Changes of address at the polls
21.5(49)	Eligibility declarations in the election register
21.6	Reserved
21.7(48A)	Election day registration
21.8(48A)	Notice to election day registrant
21.9(49)	“Vote here” signs
21.10(43)	Application for status as a political party
21.11(49)	Statement to provisional voter

21.12(47,53)	Absentee ballot receipt deadline when the United States post office is closed on the deadline for receipt of absentee ballots
21.13(47,50)	Canvass date adjustment when the United States post office is closed on the deadline for receipt of absentee ballots
21.14 to 21.19	Reserved
21.20(62)	Election contest costs
21.21(62)	Limitations
21.22(49)	Photocopied ballot procedures
21.23 and 21.24	Reserved
21.25(50)	Administrative recounts
21.26 to 21.29	Reserved
21.30(49)	Inclusion of annexed territory in city reprecincting and redistricting plans
21.31(275)	School director district maximum allowable deviation between director districts
21.32(372)	City ward maximum allowable deviation between city wards
21.33(49)	Redistricting special election blackout period
21.34 to 21.49	Reserved
21.50(49)	Polling place accessibility standards
21.51 to 21.74	Reserved
21.75(49)	Voting centers for certain elections
21.76 to 21.99	Reserved
21.100(39A,47)	Complaints concerning violations of Iowa Code chapters 39 through 53
21.101 to 21.199	Reserved

DIVISION II  
BALLOT PREPARATION

21.200(49)	Constitutional amendments and public measures
21.201(44)	Competing nominations by nonparty political organizations
21.202(43,52)	Form of primary election ballot
21.203(49,52)	Form of general election ballot
21.204(260C)	Tabulating election results by school district for merged area special elections
21.205 to 21.299	Reserved

DIVISION III  
ABSENTEE VOTING

21.300(53)	Satellite absentee voting stations
21.301(53)	Absentee ballot requests from voters whose registration records are “inactive”
21.302(48A)	In-person absentee registration
21.303(53)	Mailing absentee ballots
21.304(53)	Absentee ballot requests from voters whose registration records are “pending”
21.305(53)	Confirming commissioner’s receipt of an absentee ballot on election day
21.306 to 21.319	Reserved
21.320(53)	Absentee voting by UOCAVA voters
21.321 to 21.350	Reserved
21.351(53)	Receiving absentee ballots
21.352(53)	Review of returned affidavit envelopes
21.353(53)	Opening the return carrier envelopes
21.354(53)	Review process
21.355(53)	Notice to voter
21.356 to 21.358	Reserved
21.359(53)	Processing absentee ballots before election day
21.360	Reserved
21.361(53)	Rejection of absentee ballot
21.362 to 21.399	Reserved

DIVISION IV  
INSTRUCTIONS FOR SPECIFIC ELECTIONS

- 21.400(376) Signature requirements for certain cities
- 21.401(376) Signature requirements in cities with primary or runoff election provisions
- 21.402(372) Filing deadline for charter commission appointment petition
- 21.403(81GA, HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections
- 21.404(81GA, HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements
- 21.405(69) Special elections to fill a vacancy in the office of representative in Congress
- 21.406 to 21.499 Reserved
- 21.500(277) Signature requirements for school director candidates
- 21.501 to 21.600 Reserved
- 21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors or method of election
- 21.602(43) Primary election—nominations by write-in votes for certain offices
- 21.603 to 21.799 Reserved
- 21.800(423B) Local sales and services tax elections
- 21.801(423B) Form of ballot for local option tax elections
- 21.802(423B) Local vehicle tax elections
- 21.803(82GA, HF2663) Revenue purpose statement ballots
- 21.804 to 21.809 Reserved
- 21.810(34A) Referendum on enhanced 911 emergency telephone communication system funding
- 21.811 to 21.819 Reserved
- 21.820(99F) Gambling elections
- 21.821 to 21.829 Reserved
- 21.830(357E) Benefited recreational lake district elections

CHAPTER 22  
VOTING SYSTEMS

TESTING AND EXAMINATION OF VOTING EQUIPMENT

- 22.1(52) Definitions for certification of voting equipment
- 22.2(52) Voting system standards
- 22.3(52) Examiners
- 22.4(52) Fees and expenses paid to the examiners
- 22.5(52) Examination of voting equipment—application
- 22.6(52) Review of application by examiners
- 22.7(52) Consultant
- 22.8(52) Contact other users
- 22.9(52) Testing the equipment
- 22.10(52) Test primary election for three political parties
- 22.11(52) Test general election
- 22.12(52) Report of findings
- 22.13(52) Notification
- 22.14(52) Denial of certification
- 22.15(52) Application for reconsideration
- 22.16(52) Appeal
- 22.17(52) Changes to certified voting systems
- 22.18(52) Rescinding certification
- 22.19 to 22.29 Reserved
- 22.30(50,52) Electronic transmission of election results

22.31(52)	Acceptance testing
22.32 to 22.40	Reserved
22.41(52)	Public testing of optical scan systems
22.42(52)	Preparing test decks
22.43(52)	Conducting the public test
22.44 to 22.49	Reserved
22.50(52)	Voting system security
22.51(52)	Memory cards
22.52(52)	Voting equipment malfunction at the polls
22.53 to 22.99	Reserved

## OPTICAL SCAN VOTING SYSTEMS

22.100	Reserved
22.101(52)	Definitions
22.102(52)	Optical scan ballots
22.103 to 22.199	Reserved

## PRECINCT COUNT SYSTEMS

22.200(52)	Security
22.201(52)	Programming and testing the tabulating devices for precinct count systems
22.202(50)	Unique race and candidate ID numbers for election night results reporting
22.203(50)	Reporting election night results electronically
22.204 to 22.220	Reserved
22.221(52)	Sample ballots and instructions to voters
22.222 to 22.230	Reserved
22.231(52)	Emergency ballot box or bin
22.232(52)	Manner of voting
22.233 to 22.239	Reserved
22.240(52)	Results
22.241(52)	Electronic transmission of election results
22.242 to 22.249	Reserved
22.250(52)	Absentee voting instructions
22.251 to 22.259	Reserved
22.260(52)	Specific precinct count systems
22.261(52)	Election Systems & Software Model 100—preparation and use in elections
22.262(52)	Premier Election Solutions' AccuVote OS and AccuVote OSX precinct count devices
22.263(52)	AutoMARK Voter Assist Terminal (VAT)
22.264(52)	Unisyn OpenElect OVO unit—preparation and use in elections
22.265(52)	Unisyn OpenElect OVI unit
22.266 to 22.339	Reserved

## OPTICAL SCAN VOTING SYSTEM USED FOR ABSENTEE AND SPECIAL VOTERS PRECINCT

22.340(52)	Processing
22.341(52)	Reporting results from absentee ballots and provisional ballots
22.342(52)	Tally list for absentee and special voters precinct
22.343(39A,53)	Counting absentee ballots on the day before the general election

## CHAPTER 23

## VOTER REGISTRATION IN STATE AGENCIES

23.1(48A)	Definitions
23.2(48A)	Registration forms
23.3(48A)	Declination forms
23.4(48A)	Electronic declination records

- 23.5(48A) Retention and storage of declination forms
- 23.6(48A) Distribution of voter registration forms
- 23.7(48A) Applications, recertifications, renewals and changes of address received from applicant representatives
- 23.8(48A) Recertification and renewal applications
- 23.9(48A) Change of address notices
- 23.10(48A) Ineligible applicants
- 23.11(48A) Other voter registration agencies

#### CHAPTER 24

##### UNOFFICIAL CANVASS OF VOTES

- 24.1(47) Unofficial canvass
- 24.2(47) Duties of the county commissioner of elections
- 24.3(47) Duties of the state commissioner of elections

#### CHAPTER 25

##### ELECTION ADMINISTRATION—ADMINISTRATIVE COMPLAINT PROCEDURE

- 25.1(17A,39A,47) General provisions
- 25.2(17A,39A,47) Form of complaint
- 25.3(17A,39A,47) Filing, service, and initial review of complaint
- 25.4(17A,39A,47) Notice of proceedings
- 25.5(17A,39A,47) Informal settlement
- 25.6(17A,39A,47) Answer
- 25.7(17A,39A,47) Presiding officer
- 25.8(17A,39A,47) Proceedings based upon written submissions
- 25.9(17A,39A,47) Written decisions, available remedies
- 25.10(17A,39A,47) Hearings
- 25.11(17A,39A,47) Time requirements
- 25.12(17A,39A,47) Waiver of procedures
- 25.13(17A,39A,47) Telephone and electronic proceedings
- 25.14(17A,39A,47) Disqualification
- 25.15(17A,39A,47) Consolidation—severance
- 25.16(17A,39A,47) Service and filing of pleadings and other papers
- 25.17(17A) Discovery
- 25.18(17A) Issuance of subpoenas in a complaint proceeding
- 25.19(17A) Motions
- 25.20(17A) Continuances
- 25.21(17A) Withdrawals
- 25.22(17A) Intervention
- 25.23(17A) Hearing procedures
- 25.24(17A) Evidence
- 25.25(17A) Default
- 25.26(17A) Ex parte communication
- 25.27(17A) Recording costs
- 25.28(17A) Final decisions, publication and party notification
- 25.29(17A) Interlocutory appeals
- 25.30(17A) Appeals and review
- 25.31(17A) Applications for rehearing
- 25.32(17A) Stays of orders
- 25.33(17A) No factual dispute complaint proceedings
- 25.34(17A) Alternate dispute resolution
- 25.35(17A) Judicial review

## CHAPTER 26 COUNTING VOTES

### PART I—GENERAL PROVISIONS

- 26.1(49) Definitions
- 26.2(49) Counting votes on election day
- 26.3(50) Reporting overvotes and undervotes
- 26.4(50) Absentee and special voters precinct
- 26.5 to 26.9 Reserved

### PART II—OPTICAL SCAN VOTING SYSTEMS

- 26.10(50) Systems affected
- 26.11(50) Examples used
- 26.12(50) Wrong ballots
- 26.13(50) Ballot properly marked by the voter
- 26.14(50) Ballots with identifying marks
- 26.15(49) Voter's choice
- 26.16(49) Determination of voter's choice
- 26.17(49) Marks not counted
- 26.18(49) Acceptable marks
- 26.19(49) Counting straight party or organization votes
- 26.20(49) Write-in votes
- 26.21(49) Corrections by voter
- 26.22 to 26.49 Reserved

### PART III—PAPER BALLOTS

- 26.50(49) Standards
- 26.51(49) Write-in votes
- 26.52 to 26.59 Reserved

### PART IV—VOTING MACHINES

- 26.60 to 26.99 Reserved

### PART V—RECOUNTS

- 26.100(50) Requester
- 26.101(50) Recounts for candidates who run as a team
- 26.102(50) Bond
- 26.103(50) Recount board
- 26.104(50) Responsibilities of the recount board
- 26.105(50) Duties of commissioner and commissioner's staff
- 26.106(50) Access to meeting
- 26.107(50) Report of the recount board

## CHAPTER 27 HELP AMERICA VOTE ACT GRANTS

- 27.1(47,80GA,SF2298) Purpose
- 27.2(47,80GA,SF2298) Definitions
- 27.3(47,80GA,SF2298) Eligibility and requirements
- 27.4(47,80GA,SF2298) Application process
- 27.5(47,80GA,SF2298) Application contents
- 27.6(47,80GA,SF2298) Application review
- 27.7(47,80GA,SF2298) Award process
- 27.8(47,80GA,SF2298) Reports
- 27.9(47,80GA,SF2298) Access to records

## CHAPTER 28

## VOTER REGISTRATION FILE (I-VOTERS) MANAGEMENT

- 28.1(47,48A) State registrar's responsibility
- 28.2(48A) Access and fees
- 28.3(48A) Duplicate and multiple voter registration record deletion process
- 28.4(48A) Cancellations and restorations of voter registration due to felony conviction
- 28.5(47,48A) Noncitizen registered voter identification and removal process

## CHAPTER 29

Reserved

DIVISION III  
UNIFORM COMMERCIAL CODE

## CHAPTER 30

## UNIFORM COMMERCIAL CODE

- 30.1(554) General provisions
- 30.2(554) Acceptance and refusal of documents
- 30.3(554) UCC information management system
- 30.4(554) Filing and data entry procedures
- 30.5(554) Search requests and reports
- 30.6(554) Other notices of liens

## CHAPTER 31

## REGISTRATION OF POSTSECONDARY SCHOOLS

- 31.1(80GA,HF2559) Postsecondary registration fees

## CHAPTERS 32 to 39

Reserved

DIVISION IV  
CORPORATIONSCHAPTER 40  
CORPORATIONS

- 40.1(490,499,504A) Filing of documents
- 40.2(490,499,504A) Reinstatement of corporations
- 40.3(487,490,504A) Names distinguishable upon corporate records
- 40.4(490,491,496C,497,498,499,504A) Payment and refund of fees
- 40.5(491,496A,499,504A,548) Document to county recorder
- 40.6(548) Registration and protection of marks
- 40.7(80GA,SF2274) Revised nonprofit corporation Act fees
- 40.8(488,489,490) Biennial reports
- 40.9(490) Online filing requirements

## CHAPTER 41

Reserved

## CHAPTER 42

## ATHLETE AGENT REGISTRATION

- 42.1(9A,17A) Fees
- 42.2(9A,17A) Surety bond
- 42.3(9A,17A) Agent contract
- 42.4(9A,17A) General information

CHAPTER 43  
NOTARIAL ACTS

- 43.1(9E) Certificate of notarial acts
- 43.2(9E) Short forms
- 43.3(9E) Notarial acts in other jurisdictions of the United States
- 43.4(9E) Notarial acts under federal authority
- 43.5(9E) Foreign notarial acts
- 43.6(9E) Revocation of notary appointment

CHAPTER 21  
ELECTION FORMS AND INSTRUCTIONS

[Prior to 7/13/88, see Secretary of State[750], Ch 11]

DIVISION I  
GENERAL ADMINISTRATIVE PROCEDURES

**721—21.1(47) Emergency election procedures.** The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

**21.1(1) Definitions.**

“*Commissioner*” means the county commissioner of elections.

“*Election contest court*” means any of the courts specified in Iowa Code sections 57.1, 58.4, 61.1, 62.1 and 376.10.

“*Extremely inclement weather*” means a natural occurrence, such as a rainstorm, windstorm, ice storm, blizzard, tornado or other weather conditions, which makes travel extremely dangerous or which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*Natural disaster*” means a natural occurrence, such as a fire, flood, blizzard, earthquake, tornado, windstorm, ice storm, or other events, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*Other disaster*” means an occurrence caused by machines or people, such as fire, hazardous substance or nuclear power plant accident or incident, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*State commissioner*” means the state commissioner of elections.

**21.1(2) Notice of natural or other disaster or extremely inclement weather.** The county commissioner of elections, or the commissioner’s designee, may notify the state commissioner of elections that due to a natural or other disaster or extremely inclement weather an election cannot safely be conducted in the time or place for which the election is scheduled to be held. If the commissioner or the commissioner’s designee is unable to transmit notice of the hazardous conditions, the notice may be given by any elected county official. Verification of the commissioner’s agreement with the severity of the conditions and the danger to the election process shall be transmitted to the state commissioner as soon as possible. Notice may be given by telephone or by facsimile machine, but a signed notice shall also be delivered to the state commissioner.

**21.1(3) Declaration of emergency due to natural or other disaster or extremely inclement weather.** After receiving notice of hazardous conditions, the state commissioner of elections, or the state commissioner’s designee, may declare that an emergency exists in the affected precinct or precincts. A copy of the declaration of the emergency shall be provided to the commissioner.

**21.1(4) Emergency modifications to conduct of elections.** When the state commissioner of elections has declared that an emergency exists due to a natural or other disaster or to extremely inclement weather, the county commissioner of elections, or the commissioner’s designee, shall consult with the state commissioner to develop a plan to conduct the election under the emergency conditions. All modifications to the usual method for conducting elections shall be approved in advance by the state commissioner unless prior approval is impossible to obtain.

Modifications may be made to the method for conducting the election including relocation of the polling place, postponement of the hour of opening the polls, postponement of the date of the election if no candidates for federal offices are on the ballot, reduction in the number of precinct election officials in nonpartisan elections, or other reasonable and prudent modifications that will permit the election to be conducted.

**21.1(5) *Relocation of polling place.*** The substitute polling place shall be as close as possible to the usual polling place and shall be within the same precinct if possible. Preference shall be given to buildings which are accessible to the elderly and disabled. Buildings supported by taxation shall be made available without charge by the authorities responsible for their administration. If it is necessary, more than one precinct may be located in the same room.

A notice of the location of the substitute polling place shall be posted on the door of the former polling place not later than one hour before the scheduled time for opening the polls or as soon as possible. If it is unsafe or impossible to post the sign on the door of the former polling place, the notice shall be posted in some other visible place at or near the site of the former polling place. If time permits, notice of the relocation of the polling place shall be published in the same newspaper in which notice of election was published, otherwise notice of relocation may be published in any newspaper of general circulation in the political subdivision which will appear on or before election day. The commissioner shall inform all broadcast media and print news organizations serving the jurisdiction of the modifications.

**21.1(6) *Postponement of election.*** An election, other than an election at which a federal office appears on the ballot, may be postponed until the following Tuesday. If the election involves more than one precinct, the postponement must include all precincts within the political subdivision. If the election is postponed, ballots shall not be reprinted to reflect the modification in the election date. The date of the close of voter preregistration by mail for the election shall not be extended. Precinct election registers prepared for the original election date may be used or reprinted at the commissioner's discretion.

On the day that the postponed election is actually held, all election day procedures must be repeated.

**21.1(7) *Absentee voting in postponed elections.*** Absentee ballots shall be delivered to voters pursuant to Iowa Code section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled. However, if absentee ballots have been tabulated before the election is postponed, the absentee ballots shall be sealed in an envelope by the absentee and special voters precinct board and stored securely until the date the election is actually held. The sealed envelopes shall be opened by the absentee and special voters precinct board on the date the election is actually held, counters on the tabulating equipment (if any) shall be reset to zero, and all absentee ballots tabulated on the original election date shall be retabulated.

**21.1(8) *Absentee and special voters precinct board in postponed elections.*** The absentee and special voters precinct board shall meet to consider provisional ballots at the times specified in Iowa Code sections 50.22 and 52.23, calculated from the date the election is held. No absentee ballots shall be counted until the date the election is held.

**21.1(9) *Canvass of votes in postponed elections.*** The canvass of votes shall also be rescheduled for one week after the originally scheduled canvass date.

**21.1(10) *Postponements made on election day.*** If the emergency is declared while the polls are open and the decision is made to postpone the election, each precinct polling place in the political subdivision shall be notified to close its doors and to halt all voting immediately. People present in the polling place who are waiting to vote shall not be given ballots. People who have received and marked their ballots shall deposit them in the ballot box; unmarked ballots may be returned to the precinct election officials.

The precinct election officials shall seal all ballots which were cast before the declaration of the emergency in secure containers. The containers shall be clearly marked as ballots from the postponed election. If it is safe to do so, the ballot containers, election register, and other election supplies shall be transported to the commissioner's office. The ballots shall be stored in a secure place. If it is unsafe to travel to the commissioner's office, the chairperson of the precinct election board shall see that the ballots and the election register are securely stored until it is safe to return them to the commissioner. If no contest is pending six months after the canvass for the election is completed, the unopened, sealed ballot containers shall be destroyed.

If automatic tabulating equipment is used, the automatic tabulating equipment shall be closed and sealed without printing the results. Before the date the election is held, the automatic tabulating equipment shall be reset to zero. Documents showing the progress of the count, if any, shall be sealed in an envelope and stored. No one shall reveal the progress of the count. After six months, the sealed envelope containing the vote totals shall be destroyed if no contest is pending.

**21.1(11) *Records kept.*** The state commissioner of elections shall maintain records of each emergency declaration. The records of emergency declarations for federal elections shall be kept for 22 months, and records for all other elections shall be kept for six months following the election. The records shall include the following information:

- a. The county in which the emergency occurred.
- b. The date and time the emergency declaration was requested.
- c. The name and title of the person making the request.
- d. Name and date of the election affected.
- e. The jurisdiction for which the election is to be conducted (school, city, county, or other).
- f. The number of precincts in the jurisdiction.
- g. The number of precincts affected by the emergency.
- h. The nature of the emergency, i.e., natural or other disaster, or extremely inclement weather.
- i. The date or dates of the occurrence of the natural or other disaster or extremely inclement weather.
- j. Conditions affecting the conduct of the election.
- k. Whether the polling places may safely be opened on time.
- l. Action taken: such as moving the polling place, change voting system, postpone election until the following Tuesday.
- m. Method to be used to inform the public of changes made in the election procedure.
- n. The signature of the state commissioner or the state commissioner's designee who was responsible for declaring the emergency.

**21.1(12) *Federal elections.***

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. If a federal or state court order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.

**21.1(13) *Military emergencies.*** A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces," may return an absentee ballot via electronic transmission only if the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area or if the voter is an active member of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard and is located outside the United States or any of its territories. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

**21.1(14) *Election contest emergency.*** If an election contest court finds that there were errors in the conduct of an election which make it impossible to determine the result of the election, the contest court shall notify the state commissioner of elections of its finding. The state commissioner shall order a repeat

election to be held. The repeat election date shall be set by the state commissioner. The repeat election shall be conducted under the state commissioner's supervision.

The repeat election shall be held at the earliest possible time, but it shall not be held earlier than 14 days after the date the election was set aside. Voter registration, publication, equipment testing and other applicable deadlines shall be calculated from the date of the repeat election.

The repeat election shall be conducted under the same procedures required for the election that was set aside, except that all known errors in preparation and procedure shall be corrected. The nominations from the initial election shall be used in the repeat election unless the contest court specifically rejects the initial nomination process in its findings. Precinct election officials for the repeat election may be replaced at the discretion of the auditor.

The following materials prepared for the original election shall be used or reconstructed for the repeat election:

Ballots (showing the date of repeat election). This may be stamped on ballots printed for the original election.

Notice of election (showing the date of repeat election).

This rule is intended to implement Iowa Code section 47.1.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.2(47) Electronic submission of absentee ballot applications and affidavits of candidacy.** Absentee ballot applications and affidavits of candidacy may be submitted electronically using either fax or E-mail.

**21.2(1) *Electronic copies of absentee ballot applications and affidavits of candidacy accepted for filing.*** Assuming that all other legal requirements are met, absentee ballot applications and affidavits of candidacy required by Iowa Code chapters 43, 44, 45, 161A, 260C, 277, 376 and 420 may be submitted electronically by either fax or E-mail if presented to the appropriate filing officer as an exact copy of the original and if the submission is in compliance with subrule 21.2(2).

**21.2(2) *Original absentee ballot applications.*** The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the Friday before the election. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

*a.* The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

*b.* The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark on the envelope containing the original absentee ballot application is either illegible or later than the Friday before the election.

**21.2(3) *Original affidavits of candidacy.*** The original copy of an affidavit of candidacy submitted electronically shall also be filed with the appropriate commissioner. The envelope bearing the original affidavit (if any) shall be postmarked not later than the last day to file the document.

*a.* The filing shall be void if the original affidavit of candidacy filed electronically is not received within seven days after the filing deadline for the original affidavit of candidacy.

*b.* The filing shall be void if the postmark on the envelope containing the original affidavit of candidacy is later than the filing deadline.

*c.* If an affidavit of candidacy filing is voided because the original affidavit of candidacy submitted by facsimile machine was postmarked too late or arrives too late, the person who filed the document shall be notified immediately in writing.

This rule is intended to implement Iowa Code sections 43.11, 43.19, 43.54, 43.67, 43.78, 44.3, 45.3, 45.4, 46.20, 47.1, and 47.2; sections 53.2, 53.8, 53.17, 53.22, 53.25, and 53.40 as amended by 2009 Iowa Acts, House File 475; sections 53.45, 61.3, 161A.5, and 277.4; sections 260C.15 and 376.4 as amended by 2009 Iowa Acts, House File 475; and sections 376.11 and 420.130.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9879B, IAB 11/30/11, effective 1/4/12]

**721—21.3(49,48A) Voter identification documents.**

**21.3(1)** *Identification documents for persons other than election day registrants.* Unless the person is registering to vote at the polls on election day, precinct election officials shall accept the identification documents listed in Iowa Code section 48A.8 from any person who is asked or required to present identification pursuant to Iowa Code section 49.77 as amended by 2009 Iowa Acts, House File 475.

**21.3(2)** *Identification for election day registrants.*

*a.* A person who applies to register to vote on election day shall provide proof of identity and residence pursuant to Iowa Code section 48A.7A in the precinct where the person is applying to register and vote.

*b.* Any registered voter who attests for another person registering to vote at the polls on election day shall be a registered voter of the same precinct. The registered voter may be a precinct election official or a pollwatcher, but may not attest for more than one person applying to register at the same election.

**21.3(3)** *Current and valid identification.*

*a.* “Current and valid” or “identification,” for the purposes of this rule, means identification that meets the following criteria:

(1) The expiration date on the identification has not passed. An identification is still valid on the expiration date. An Iowa nonoperator’s identification that shows “none” as the expiration date shall be considered current and valid.

(2) The identification has not been revoked or suspended.

*b.* A current and valid identification may include a former address.

**21.3(4)** *Identification not provided.* A person who has been requested to provide identification and does not provide it shall vote only by provisional ballot pursuant to Iowa Code section 49.81. However, a person who is registering to vote on election day pursuant to Iowa Code section 48A.7A may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct.

This rule is intended to implement Iowa Code section 48A.7A and section 49.77 as amended by 2009 Iowa Acts, House File 475, and P.L. 107-252, Section 303.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.4(49) Changes of address at the polls.** An Iowa voter who has moved from one precinct to another in the county where the person is registered to vote may report a change of address at the polls on election day.

**21.4(1)** To qualify to vote in the election being held that day, the voter shall:

*a.* Go to the polling place for the precinct where the voter lives on election day.

*b.* Complete a registration form showing the person’s current address in the precinct.

*c.* Present proof of identity as required by subrule 21.3(1).

**21.4(2)** The officials shall require a person who is reporting a change of address at the polls to cast a provisional ballot if the person’s registration in the county cannot be confirmed. Registration may be confirmed by:

*a.* Telephoning the office of the county commissioner of elections, or

*b.* Reviewing a printed list of all registered voters who are qualified to vote in the county for the election being held that day, or

*c.* Researching the county’s voter registration records using a computer.

**21.4(3)** In precincts where the voter’s declaration of eligibility is included in the election register pursuant to rule 721—21.5(49) and Iowa Code section 49.77, the commissioner shall provide to each precinct one of the two following methods for recording changes of address:

*a.* The voter shall be given both an eligibility declaration and a voter registration form. The eligibility declaration may be printed on the same piece of paper as the voter registration form.

*b.* The commissioner shall provide blank lines on the election register for the precinct election officials to record the voter’s name, address, and, if provided, telephone number, and, in primary

elections, political party affiliation. The voter shall sign the election register next to the printed information. The voter shall also complete a voter registration form showing the voter's current address.

This rule is intended to implement Iowa Code section 49.77 as amended by 2009 Iowa Acts, House File 475.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.5(49) Eligibility declarations in the election register.** To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a voter roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address, and, at the voter's option, telephone number, and, in primary elections, political party affiliation.

The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If a multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

This rule is intended to implement Iowa Code section 49.77.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.6(43,50) Turnout reports.** Rescinded IAB 6/2/10, effective 7/1/10.

**721—21.7(48A) Election day registration.** In addition to complying with the identification provisions in rule 721—21.3(49,48A), precinct election officials shall comply with the following requirements:

**21.7(1)** Precinct election officials shall inspect the identification documents presented by election day registrants to verify the following:

- a. The photograph shows the person who is registering to vote.
- b. The name on the identification document is the same as the name of the applicant.
- c. The address on the identification document is in the precinct where the person is registering to vote.

**21.7(2)** Precinct election officials shall verify that each person who attempts to attest to the identity and residence of a person who is registering to vote on election day is a registered voter in the precinct and has not attested for any other voter in the election. The officials shall note in the election register that the person has attested for an election day registrant.

**21.7(3)** Precinct election officials shall permit any person who is in line to vote at the time the polls close to register and vote on election day if the person otherwise meets all of the election day registration requirements.

**21.7(4)** In precincts where an electronic program is not used to check the name of an election day registrant against the statewide list of felons who have had their right to vote revoked, precinct election officials shall provide each election day registrant with a "Notice to Election Day Registrants" prepared by the state commissioner before allowing the voter to register and vote on election day. The "Notice to Election Day Registrants" prepared by the state commissioner will be posted on the state commissioner's Web site.

This rule is intended to implement 2007 Iowa Acts, House File 653.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8777B, IAB 6/2/10, effective 5/7/10]

**721—21.8(48A) Notice to election day registrant.** The commissioner shall send to each person who registers to vote on election day, pursuant to Iowa Code section 48A.7A, an acknowledgment of the registration by nonforwardable mail. If the postal service returns the acknowledgment as undeliverable, the commissioner shall send a notice to the voter by forwardable mail. The notice shall be substantially in the form titled "Notice to Election Day Registrant" posted on the state commissioner's Web site.

This rule is intended to implement Iowa Code sections 48A.7A and 48A.26A.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.9(49) "Vote here" signs.**

1. Size. The signs shall be no smaller than 16 inches by 24 inches.

2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a “vote here” sign at the driveway entrance would not help potential voters find the voting area, no “vote here” sign shall be posted at the entrance to that driveway.

This rule is intended to implement Iowa Code section 49.21.

**721—21.10(43) Application for status as a political party.** A political organization which is not currently qualified as a political party may file an application for determination of political party status with the state commissioner of elections. The application may be filed after the completion of the executive council’s canvass of votes for the general election, but not later than one year after the date of the election at which the organization’s candidate for President of the United States or governor received at least 2 percent of the vote.

**21.10(1) Application form.** The application shall be substantially in the form titled “Application for Political Party Status” posted on the state commissioner’s Web site.

**21.10(2) Response.** If the political organization meets the requirements established in Iowa Code section 43.2, the commissioner shall declare that the organization has qualified as a political party, effective 21 days after the application is approved. If the organization does not meet the requirements, the state commissioner shall immediately notify the applicant in writing of the reason for the rejection of the application.

**21.10(3) Disqualification of political party.** If at the close of nominations for the general election a political party has not nominated a candidate for the office of President of the United States, or for governor, as the case may be, the political party shall be disqualified immediately.

If the candidate of a political party for President of the United States or for governor, as the case may be, does not receive 2 percent of the votes cast for that office at a general election, the political party shall be disqualified. The effective date of the disqualification shall be the date of the completion of the state canvass of votes.

When a political party is disqualified, the state commissioner shall immediately notify the chairperson or central committee of the disqualified political party.

**21.10(4) Notice of qualification and disqualification of political parties.** The state commissioner of elections shall immediately notify the state registrar of voters, the voter registration commission, and the county commissioners of elections when a political party is qualified or disqualified. The notice shall include the name of the political party and the date upon which change in political party status becomes effective.

The state commissioner of elections shall also publish notice of the qualification or disqualification of a political party in a newspaper of general circulation in each congressional district. The publication shall be made within 30 days of the approval of an application for qualification or within 30 days of the effective date of a disqualification.

This rule is intended to implement Iowa Code sections 43.2 and 47.1.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.11(49) Statement to provisional voter.** Each voter who is required to vote a provisional ballot at the polls on election day shall be given a statement from the precinct election officials which shall be in substantially the following form:

**Statement to Person Casting a Provisional Ballot**  
(To be completed by Precinct Official and given to Voter)

Voter’s Name: \_\_\_\_\_

**Reason for Provisional Ballot** (check all that apply):

- Voter did not have proper identification (see “What you need to provide” below)  
 Absentee voter with no ballot to surrender

Voter was challenged by another registered voter

Reason: \_\_\_\_\_

**What you need to provide before your ballot will count:**

- Photo ID that has not expired and contains your name and picture
- One of the following that has not expired: Iowa driver’s license, out-of-state driver’s license, non-driver ID, U.S. passport, U.S. military ID, ID card issued by an employer, student ID issued by Iowa high school or college
- One of the following showing your name and current address: bank statement, paycheck, utility bill, property tax statement, residential lease, government check, or other government document

Deadline: \_\_\_\_\_ a.m./p.m., \_\_\_\_\_ (date)

Mail or Deliver Evidence to: \_\_\_\_\_, County Auditor

County Auditor Address: \_\_\_\_\_

If proof of ID or residence is required, your provisional ballot may be counted if you bring a copy of the identification listed above to this precinct before the polls close today or to the county auditor at the above address by the deadline indicated above. If your ballot is not counted, you will be notified by mail of the reason why it was not counted.

Your right to vote will be reviewed by the Special Precinct Board. You have the right and are encouraged to make a written statement and submit additional written evidence to the Board supporting your qualifications as a registered voter.

\_\_\_\_\_  
Precinct Election Official’s Signature

\_\_\_\_\_  
Date

This rule is intended to implement Iowa Code section 49.81.  
[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.12(47,53) Absentee ballot receipt deadline when the United States post office is closed on the deadline for receipt of absentee ballots.** When the United States post office is closed in observance of a federal holiday and is not delivering mail on the deadline for receipt of absentee ballots as set forth in Iowa Code section 53.17, the deadline to receive mailed and timely postmarked absentee ballots shall move to the next business day on which mail delivery is available.

This rule is intended to implement Iowa Code sections 47.1, 47.4 and 53.17.  
[ARC 0266C, IAB 8/8/12, effective 9/12/12]

**721—21.13(47,50) Canvass date adjustment when the United States post office is closed on the deadline for receipt of absentee ballots.**

**21.13(1)** When the United States post office is closed on a Monday that is also the deadline for receipt of absentee ballots, the county board of canvassers may hold the canvass on the Tuesday or Wednesday following the election.

**21.13(2)** When the United States post office is closed on a Thursday that is also the deadline for receipt of absentee ballots, the county board of canvassers shall hold the canvass on the Friday after the election, no earlier than 1 p.m.

This rule is intended to implement Iowa Code sections 47.1, 47.4 and 50.24.  
[ARC 0266C, IAB 8/8/12, effective 9/12/12]

**721—21.14 to 21.19** Reserved.

**721—21.20(62) Election contest costs.** In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:

1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

**721—21.21(62) Limitations.** The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

**721—21.22(49) Photocopied ballot procedures.** If it is necessary for ballots to be photocopied pursuant to Iowa Code section 49.67, the commissioner shall use the “Request for Additional Ballots” form posted on the state commissioner’s Web site to record the request and resolution thereof. The commissioner shall complete the form, including the reason additional ballots are needed; who made the request for additional ballots and what time the request was made; the number of additional ballots produced; the manner of production of the additional ballots, including location of production; and the commissioner’s signature.

This rule is intended to implement Iowa Code section 49.67.  
[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.23 and 21.24** Reserved.

**721—21.25(50) Administrative recounts.** When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount. The board of supervisors shall respond as soon as possible after receipt of the commissioner’s request.

The recount shall be conducted by members of the absentee and special voters precinct board following the provisions of Iowa Code section 50.48 as amended by 2009 Iowa Acts, House File 475, Iowa Code section 50.49 and 721—Chapter 26. The commissioner may use different memory cards for the recount and shall retain the information on the memory cards used in the election pursuant to 721—subrule 22.51(13). The commissioner may also use different election definition files if the commissioner believes the original election definition files were flawed. If the commissioner uses different election definition files for the recount, the commissioner shall also retain the election definition files for the election as required by 721—subrule 22.51(14).

This rule is intended to implement Iowa Code section 50.48 as amended by 2009 Iowa Acts, House File 475, and Iowa Code section 50.49.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.26 to 21.29** Reserved.

**721—21.30(49) Inclusion of annexed territory in city reprecincting and redistricting plans.** If a city has annexed territory after January 1 of a year ending in zero and before the completion of the redrawing of precinct and ward boundaries during a year ending in one, the city shall include the annexed land in precincts drawn pursuant to Iowa Code sections 49.3 and 49.5.

**21.30(1)** When the city council draws precinct and ward boundaries, if any, the city shall use the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

**21.30(2)** When the board of supervisors, or the temporary county redistricting commission, draws precinct and county supervisor district boundaries, if any, it shall subtract from the population of the adjacent unincorporated area the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

**21.30(3)** The use of population figures for reprecincting or redistricting shall not affect the official population of the city or the county. Only the U.S. Bureau of the Census may adjust the official population figures, by corrections or by conducting special censuses. See Iowa Code section 9F.6.

This rule is intended to implement Iowa Code sections 49.3 and 49.5.

**721—21.31(275) School director district maximum allowable deviation between director districts.** Each director district shall have a population that exceeds the population of any other director district by no more than 10 percent. Director district plans with variations in excess of 10 percent between two or more districts shall be accompanied by justification for the deviation and shall be rejected by the secretary of state unless the deviation is necessary to comply with one of the other standards enumerated in Iowa Code section 275.23A.

This rule is intended to implement Iowa Code section 275.23A.

[ARC 9559B, IAB 6/15/11, effective 5/23/11; ARC 9891B, IAB 11/30/11, effective 1/4/12]

**721—21.32(372) City ward maximum allowable deviation between city wards.** Each city ward shall have a population that exceeds the population of any other city ward by no more than 10 percent. City ward plans with variations in excess of 10 percent between two or more wards shall be accompanied by justification for the deviation and shall be rejected by the secretary of state unless the deviation is necessary to comply with one of the other standards enumerated in Iowa Code section 372.13, subsection 7.

This rule is intended to implement Iowa Code section 372.13.

[ARC 9559B, IAB 6/15/11, effective 5/23/11; ARC 9891B, IAB 11/30/11, effective 1/4/12]

**721—21.33(49) Redistricting special election blackout period.** A special election shall not be held on the three Tuesdays preceding and following January 15 of years ending in the number two.

This rule is intended to implement Iowa Code chapter 49.

[ARC 9893B, IAB 11/30/11, effective 11/9/11]

**721—21.34 to 21.49** Reserved.

**721—21.50(49) Polling place accessibility standards.**

**21.50(1) Inspection required.** Before any building may be designated for use as a polling place, the county commissioner of elections or the commissioner's designee shall inspect the building to determine whether it is accessible to persons with disabilities.

**21.50(2) Frequency of inspection.** Polling places that have been inspected using the Polling Place Accessibility Survey Form prescribed in subrule 21.50(4) shall be reinspected if structural changes are made to the building or if the location of the polling place inside the building is changed.

**21.50(3) Review of accessibility.** Not less than 90 days before each primary election, the commissioner shall determine whether each polling place needs to be reinspected.

**21.50(4) Standards for determining polling place accessibility.** The survey form available on the state commissioner's Web site titled "Polling Place Accessibility Survey" shall be used to evaluate polling places for accessibility to persons with disabilities.

The term "off-street parking" used in the polling place accessibility survey means parking places in lots separated from the street and includes angle parking along the street if the accessible route from the parking place to the polling place is entirely out of the path of traffic. Parking arrangements that require either the driver or passengers of the vehicle to go into the traveled part of the street are not accessible.

An access aisle at street level that is at least 60 inches wide and the same length as each accessible parking space shall be provided. An accessible public sidewalk curb ramp shall connect the access aisle to the continuous passage to the polling place. At least one parking place shall be van-accessible with

a 96-inch access aisle connected to the continuous passage to the polling place by an accessible public sidewalk curb ramp. Two accessible parking spaces may share a common access aisle.

**21.50(5) *Temporary waiver of accessibility requirements.*** Notwithstanding the waiver provisions of 721—Chapter 10, if the county commissioner is unable to provide an accessible polling place for any precinct, the commissioner shall apply for a temporary waiver of accessibility requirements pursuant to this subrule. Applications shall be filed with the secretary of state not later than 60 days before the date of any scheduled election. If a waiver is granted, it shall be valid for two years from the date of approval by the secretary of state.

*a.* Each application shall include the following documents:

(1) Application for Temporary Waiver of Accessibility Requirements.

(2) A copy of the Polling Place Accessibility Survey Form for the polling place to be used.

(3) A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for the precinct.

*b.* If an accessible place becomes available at least 30 days before an election, the commissioner shall change polling places and shall notify the secretary of state. The notice shall include a copy of the Polling Place Accessibility Survey Form for the new polling place.

**21.50(6) *Emergency waivers.*** During the 60 days preceding an election, if a polling place becomes unavailable for use due to fire, flood, or changes made to the building, or for other reasons, the commissioner must apply for an emergency waiver of accessibility requirements in order to move the polling place to an inaccessible building. Emergency waiver applications must be filed with the secretary of state as soon as possible before election day. To apply for an emergency waiver, the commissioner shall send the following documents:

*a.* Application for Temporary Waiver of Accessibility Requirements.

*b.* A copy of the Polling Place Accessibility Survey Form for the polling place selected.

*c.* A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for this precinct (if any).

**21.50(7) *Application form.*** The form posted on the state commissioner's Web site titled "Temporary Waiver of Accessibility Requirements" shall be used to apply for a temporary waiver of accessibility requirements.

**21.50(8) *Evaluation of waivers.*** When the secretary of state receives waiver applications, the applications shall be reviewed carefully. A response shall be sent to the commissioner within one week by E-mail or by fax to notify the commissioner when the waiver request was received and whether additional information is needed.

**21.50(9) *Granting waivers.*** If the secretary of state determines from the documents filed with the waiver request that conditions justify the use of a polling place that does not meet accessibility standards, the secretary of state shall grant the waiver of accessibility requirements. If the secretary of state determines from the documents filed with the waiver request that all potential polling places have been surveyed and no accessible place is available, and the available building cannot be made temporarily accessible, the waiver shall be granted.

**21.50(10) *Notice required.*** Each notice of election published pursuant to Iowa Code section 49.53 shall clearly describe which polling places are inaccessible. The notice shall include a description of the services available to persons with disabilities who live in precincts with inaccessible polling places. The notice shall be in substantially the following form:

Any voter who is physically unable to enter a polling place has the right to vote in the voter's vehicle. For further information, please contact the county auditor's office at the telephone number or E-mail address listed below:

Telephone: \_\_\_\_\_ E-mail address: \_\_\_\_\_.

For TTY access, dial 711 + [auditor's office number].

**21.50(11) *Denial of waiver requests.*** The secretary of state shall review each waiver request. The secretary of state shall consider the totality of the circumstances as shown by the information on the waiver request, information contained in previous applications for waivers for the same precinct and for other precincts in the county, and other relevant available information. The waiver request may be

denied if it appears that the commissioner has not made a good-faith effort to find an accessible polling place. If the waiver request is denied, the secretary of state shall notify the commissioner in writing of the reason for denying the request.

This rule is intended to implement Iowa Code section 49.21.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9879B, IAB 11/30/11, effective 1/4/12]

**721—21.51 to 21.74** Reserved.

**721—21.75(49) Voting centers for certain elections.** The commissioner may establish voting centers for the regular city election, city primary election, city runoff election, regular school election, and special elections.

**21.75(1) Definition.**

“Voting center” means a location established by the commissioner for the purpose of providing ballots to all registered voters who are qualified to vote in a particular jurisdiction for a regular city election, city primary election, city runoff election, regular school election, or special election.

**21.75(2) Minimum requirements.**

*a. Establishment.* One or more voting centers may be established in lieu of precinct polling places for the elections at which the use of voting centers is permitted. Regular polling place sites that are accessible to people with disabilities may be used as voting centers for any election at which the use of voting centers is permitted. Other suitable locations may also be used.

*b. Location of voting centers.* If voting centers are established for an election, at least one voting center must be located within the boundaries of the political subdivision for which the election is being conducted. At the commissioner’s discretion, additional vote centers may be established as long as the voting center is located within the boundaries of the political subdivision for which the election is being conducted.

*c. Accessibility.* A voting center is subject to the requirements of Iowa Code section 49.21 relating to accessibility to persons who are elderly and persons with disabilities and relating to the posting of signs.

**21.75(3) Hours.** Voting center hours shall be the same as permitted for an election pursuant to Iowa Code section 49.73.

**21.75(4) Publications.** The location of each voting center shall be published in the notice of election by the commissioner in the same manner as the location of polling places is required to be published. The notice of election shall also include a description of the voting center in substantially the following form:

For the \_\_\_\_\_ election to be held on [date], voting centers will be available. Any registered voter of [jurisdiction name] may vote at any of the following places in this election:

[List addresses of voting centers.]

**21.75(5) Posting notices at regular polling places on election day.** If voting centers are established in lieu of regular polling places for an election, the commissioner shall post a notice of voting center locations, not later than the hour at which the polls open on the day of the election, on each door to the usual polling place in the precinct. The notice shall remain posted until the polls have closed.

**21.75(6) I-Voters use prohibited.** The commissioner shall not provide direct access from voting centers to the I-Voters system on election day.

**21.75(7) Determining ballot rotations.** For the purposes of determining ballot rotations pursuant to Iowa Code section 49.31 in an election for which the commissioner has established voting centers, the commissioner may use either precincts established pursuant to Iowa Code sections 49.3 to 49.5 or consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph “a.” If the commissioner uses consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph “a,” the commissioner shall use the same consolidated precincts used in the last regularly scheduled election conducted for the political subdivision in which voting centers were not used.

**21.75(8) Operation of voting centers.**

*a. Election registers and voter lists.* Each voting center shall have an election register containing the names, addresses and voter statuses of all registered voters who are eligible to vote in that election. The election register may be a paper list or may be available on computers in an electronic format, rather than as an interactive connection to I-Voters.

*b. Election day registration at voting centers.* A person who needs to register to vote may register and vote at a voting center provided that the person has appropriate identification and is a resident of the jurisdiction served by the voting center.

*c. Voters reporting address changes at voting centers.* Any person who is already registered in the county and updates the person's voter registration address at a voting center shall show identification listed in Iowa Code section 48A.8. Persons unable to provide requested identification shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

*d. Ballots.* Each voting center shall have all ballot styles necessary to provide a ballot to any voter who is eligible to vote in the election for the jurisdiction served by the voting center.

*e. Precinct election officials.* Voting centers shall be administered by a minimum of three precinct election officials selected pursuant to Iowa Code sections 49.12 to 49.16. These officials shall be trained before each election and shall have specific instructions regarding the differences between voting centers and polling places.

*f. Ballot boxes used with optical scan voting equipment at voting centers.* The commissioner may instruct two precinct election officials not of the same political party to open the ballot box periodically throughout election day to ensure the ballots are stacking evenly in the ballot box to prevent a voting equipment malfunction. The precinct election officials charged with inspecting the ballot box shall ensure the ballot box is locked and secured at all times. As an alternative to this procedure, the commissioner may supply any voting center with additional ballot boxes and the precinct election officials may move the optical scan voting equipment to a new ballot box if necessary. All ballot boxes containing voted ballots shall be locked and secured by the precinct election officials at all times.

**21.75(9) Postelection review of voter participation.**

*a.* Within 45 days after the election, the commissioner shall review the signed declarations of eligibility or the signed election registers from each voting center, and if any person is found to have voted in more than one voting center in the election, the commissioner shall immediately notify the county attorney.

*b.* The notice to the county attorney shall include a copy of the person's voter registration record and copies of the declarations of eligibility signed by the voter. The notice shall also include a reference to Iowa Code sections 39A.2(2) and 49.11(3) "b."

This rule is intended to implement Iowa Code sections 49.9 and 49.11.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.76 to 21.99** Reserved.

**721—21.100(39A,47) Complaints concerning violations of Iowa Code chapters 39 through 53.**

**21.100(1) Complaint filed.** A person who wishes to file a complaint concerning an alleged violation of any provision of Iowa Code chapters 39 through 53 shall:

*a.* File a written complaint with the secretary of state, on the form provided by the secretary of state's office.

*b.* Include the complainant's signature and contact information. Complaints lacking this information may be dismissed by the secretary of state's office without further investigation.

**21.100(2) Complaints forwarded to appropriate Iowa agency for follow-up.** The complaint shall be forwarded to the appropriate Iowa agency for further investigation and follow-up as deemed necessary.

This rule is intended to implement Iowa Code chapters 39 through 53.

[ARC 0272C, IAB 8/8/12, effective 7/20/12]

**721—21.101 to 21.199** Reserved.

DIVISION II  
BALLOT PREPARATION**721—21.200(49) Constitutional amendments and public measures.**

**21.200(1)** The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

*a.* The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words “Shall the following amendment to the Constitution (or public measure) be adopted?” or the words “Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?”

*b.* The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

*c.* Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

**21.200(2)** The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

*a.* The letter assigned by the commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

*b.* Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

**21.200(3)** The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

*a.* Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

*b.* The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

*c.* The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.201(44) Competing nominations by nonparty political organizations.**

**21.201(1)** *Nominations by convention and by petitions.* If one or more nomination petitions are received from nonparty political organization candidates for an office for which the same organization has also nominated one candidate by convention, the candidate nominated by convention shall be considered the nominee of the organization. The names of the other candidates shall appear on the ballot as candidates “nominated by petition,” and those candidates shall be notified in writing not later than seven days after the close of the filing period.

**21.201(2)** *Multiple nomination petitions.* If nomination petitions are received from more than one candidate from the same nonparty political organization for the same office and the organization has not nominated a candidate for the office by convention, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and

placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates shall appear on the ballot as candidates “nominated by petition.” A copy of the written record of the result of the drawing shall be kept with the nomination petition of each affected candidate, and each candidate shall be sent a copy for the candidate’s records not later than seven days after the close of the filing period.

**21.201(3) *Multiple nomination certificates.*** If more than one nomination certificate is received for the same office from groups with the same nonparty political organization name, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates, including any candidate who filed nomination petitions, shall appear on the ballot as candidates “nominated by petition.” A copy of the written record of the result of the drawing shall be kept with the nomination certificate of each affected candidate, and each candidate shall be sent a copy for the candidate’s records not later than seven days after the close of the filing period.

This rule is intended to implement Iowa Code section 44.17.

**721—21.202(43,52) Form of primary election ballot.** All primary election ballots shall meet the following formatting requirements:

**21.202(1) *Required information.*** In addition to other requirements listed in the Iowa Code, primary election ballots shall also include the following information:

- a. The name of the election.
- b. The name of the party, which shall be printed at the top of the ballot in at least 24-point type.
- c. The name of the county.
- d. Instructions for how to mark the ballot.

**21.202(2) *Headings and lines.*** Rescinded IAB 9/8/10, effective 8/16/10.

**21.202(3) *Office titles and order of offices.*** Each office printed on the ballot shall be preceded by an office title. The order of offices on the primary election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles on the primary election ballot shall be listed as follows:

- (1) U.S. Senator (if any).
- (2) U.S. Representative, District \_\_\_\_.
- (3) Governor.
- (4) Secretary of State.
- (5) Auditor of State.
- (6) Treasurer of State.
- (7) Secretary of Agriculture.
- (8) Attorney General.
- (9) State Senator, district \_\_\_\_ (if any).
- (10) State Representative, District \_\_\_\_.
- (11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District \_\_\_\_).
- (12) Treasurer.
- (13) Recorder.
- (14) County Attorney.

b. In presidential election years, the order of office titles on the primary election ballot shall be listed as follows:

- (1) U.S. Senator (if any).
- (2) U.S. Representative, District \_\_\_\_.
- (3) State Senator, District \_\_\_\_ (if any).
- (4) State Representative, District \_\_\_\_.
- (5) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District \_\_\_\_).
- (6) Auditor.
- (7) Sheriff.

c. If an office is printed on the primary election ballot followed by the words “To Fill Vacancy,” that office shall be listed after the other offices under the appropriate heading. If the office followed by the words “To Fill Vacancy” is the board of supervisors, that office shall appear after the other board of supervisors office(s).

**21.202(4) *Vote for number.*** Under each office title, the number of choices a voter may make in the race shall be printed in the following form: “Vote for no more than \_\_\_\_.” The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election.

**21.202(5) *Write-in vote targets.*** After the candidates’ names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.202(4). Under each write-in line, the following words shall be printed: “Write-in vote, if any.”

**21.202(6) *Font size.*** Candidates’ names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

**21.202(7) *Two-sided ballots.*** If a primary election ballot must be printed on two sides, the words “Turn the ballot over” shall be printed on both sides of the ballot, at the bottom.

This rule is intended to implement 2009 Iowa Code Supplement section 43.31 [2009 Iowa Acts, House File 475, section 6].

[ARC 8698B, IAB 4/21/10, effective 6/15/10; ARC 9049B, IAB 9/8/10, effective 8/16/10]

**721—21.203(49,52) Form of general election ballot.** All general election ballots shall meet the following formatting requirements:

**21.203(1) *Required information.*** In addition to other requirements listed in the Iowa Code, general election ballots shall also include the following information:

- a. The name of the election.
- b. The name of the county.
- c. Instructions for how to mark the ballot, including instructions for voting on judicial retentions and constitutional amendments or public measures and instructions for straight-party voting.
- d. Ballot location of the judges’ names and any constitutional amendment(s).

**21.203(2) *Headings and lines.*** Rescinded IAB 9/8/10, effective 8/16/10.

**21.203(3) *Office titles, order of offices and public measures.*** Each office printed on the ballot shall be preceded by an office title. The order of offices and public measures listed on the general election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles and public measures on the general election ballot shall be listed as follows:

- (1) U.S. Senator (if any).
- (2) U.S. Representative, District \_\_\_\_.
- (3) Governor and Lt. Governor.
- (4) Secretary of State.
- (5) Auditor of State.
- (6) Treasurer of State.
- (7) Secretary of Agriculture.
- (8) Attorney General.
- (9) State Senator, District \_\_\_\_ (if any).

- (10) State Representative, District \_\_\_\_.
- (11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District \_\_\_\_).
- (12) Treasurer.
- (13) Recorder.
- (14) County Attorney.
- (15) Township Trustee (if any).
- (16) Township Clerk (if any).
- (17) County Public Hospital Trustee (if any).
- (18) Soil and Water Conservation District Commissioner.
- (19) County Agricultural Extension Council Member.
- (20) Other nonpartisan offices (if any).
- (21) Supreme Court Justice (if any).
- (22) Court of Appeals Judge (if any).
- (23) District Court Judge (if any).
- (24) District Court Associate Judge (if any).
- (25) Associate Juvenile Judge (if any).
- (26) Associate Probate Judge (if any).
- (27) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:

1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

b. In presidential election years, the order of office titles on the general election ballot shall be listed as follows:

- (1) President and Vice President.
- (2) U.S. Senator (if any).
- (3) U.S. Representative, District \_\_\_\_.
- (4) State Senator, District \_\_\_\_ (if any).
- (5) State Representative, District \_\_\_\_.
- (6) Board of Supervisors (if plan II or plan III, then Board of Supervisors, district \_\_\_\_).
- (7) Auditor.
- (8) Sheriff.
- (9) Township Trustee (if any).
- (10) Township Clerk (if any).
- (11) County Public Hospital Trustee (if any).
- (12) Soil and Water Conservation District Commissioner.
- (13) County Agricultural Extension Council Member.
- (14) Other nonpartisan offices (if any).
- (15) Supreme Court Justice (if any).
- (16) Court of Appeals Judge (if any).
- (17) District Court Judge (if any).
- (18) District Court Associate Judge (if any).
- (19) Associate Juvenile Judge (if any).
- (20) Associate Probate Judge (if any).
- (21) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:

1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

c. If an office is printed on the general election ballot followed by the words “To Fill Vacancy,” that office shall be listed after the other offices under the appropriate heading. If the office followed by the words “To Fill Vacancy” is the board of supervisors, that office shall appear after the other board of supervisors office(s).

**21.203(4) *Vote for number.*** Under each office title, the number of choices a voter may make in the race shall be printed in the following form: “Vote for no more than \_\_\_”. The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election. Under the “President and Vice President” office title, “Vote for no more than one team” shall be printed on the ballot. Under the “Governor and Lt. Governor” office title, “Vote for no more than one team” shall be printed on the ballot.

**21.203(5) *Write-in vote targets.*** After the candidates’ names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.203(4). Under each write-in line, the following words shall be printed: “Write-in vote, if any”. For the offices of President and Vice President, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: “Write-in vote for President, if any” and “Write-in vote for Vice President, if any”. For the offices of governor and lieutenant governor, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: “Write-in vote for Governor, if any” and “Write-in vote for Lt. Governor, if any”.

**21.203(6) *Font size.*** Candidates’ names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

**21.203(7) *Two-sided ballots.*** If a general election ballot must be printed on two sides, the words “Turn the ballot over” shall be printed on both sides of the ballot, at the bottom.

**21.203(8) *Separate judicial ballot.*** The judicial ballot shall be separate from the rest of the ballot and shall be conspicuously distinguished by headings and lines.

This rule is intended to implement 2009 Iowa Code Supplement section 49.57A [2009 Iowa Acts, House File 475, section 32].

[ARC 8698B, IAB 4/21/10, effective 6/15/10; ARC 9049B, IAB 9/8/10, effective 8/16/10; ARC 0107C, IAB 4/18/12, effective 3/30/12]

**721—21.204(260C) *Tabulating election results by school district for merged area special elections.*** All results for merged area special elections, including special precinct results, shall be tabulated by school district. To tabulate the special precinct results in this manner, the county commissioner may either program the voting equipment to tabulate the ballots in this manner or manually sort and tabulate the ballots by school district.

This rule is intended to implement Iowa Code chapter 260C.

[ARC 9879B, IAB 11/30/11, effective 1/4/12]

**721—21.205 to 21.299** Reserved.

DIVISION III  
ABSENTEE VOTING

**721—21.300(53) *Satellite absentee voting stations.***

**21.300(1) *Establishment of stations.*** Satellite absentee voting stations may be established by the county commissioner of elections or by a petition of eligible electors of the jurisdiction conducting the election.

a. *Satellite absentee voting stations established by the county commissioner.* The county commissioner of elections may designate locations in the county for satellite absentee voting stations. Satellite absentee voting stations established by the commissioner shall be accessible to elderly and disabled voters. Satellite absentee voting stations must also be established so as to provide for voting in secret and ballot security.

*b. Satellite absentee voting stations established after receipt of a valid petition.* A petition requesting a satellite absentee voting station shall be substantially in the form titled "Petition Requesting Satellite Absentee Voting Station" available on the state commissioner's Web site. If the commissioner receives a petition requesting a satellite absentee voting station on or before the petition deadline set forth in Iowa Code section 53.11, the commissioner shall determine the validity of the petition within 24 hours. A petition requesting a satellite absentee voting station is valid if it contains signatures of not less than 100 eligible electors of the jurisdiction conducting the election. Electors signing the petition must include their signature, house number, street, and date the petition was signed. Signatures on lines not containing all of the required information shall not be counted. The heading on each page of the petition shall include the satellite location requested and the election name or date for which the location is requested. Signatures on petition pages without the required heading shall not be counted.

*c. Mandatory rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations shall be rejected within four days of the commissioner's receipt of the petition if:

- (1) The site requested is not accessible to elderly and disabled voters,
- (2) The site requested has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, or
- (3) The owner of the site refuses permission to locate the satellite absentee voting station at the site requested on the petition.

*d. Discretionary rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations may be rejected within four days of the commissioner's receipt of the petition if:

- (1) A petition is received requesting satellite voting for a city runoff election and a special election is scheduled to be held between the regular city election and a city runoff election.
- (2) The owner of the site demands payment for its use.

*e. Provision of ballots.* Only ballots from the county in which the site is located may be provided at the satellite absentee voting station. Ballots must be provided for the precinct in which the satellite absentee voting station is located; however, it is not necessary to provide ballots from all of the precincts in the political subdivision for which the election is being conducted.

**21.300(2) Notice provided.** Notice shall be published at least seven days before the opening of any satellite absentee voting station. If more than one satellite absentee voting station will be provided, a single publication may be used to notify the public of their availability. If it is not possible to publish the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be published as soon as possible.

A notice shall also be posted at each satellite absentee voting station at least seven days before the opening of the satellite absentee voting station. The notice shall remain posted as long as the satellite absentee voting station is scheduled for service. If it is not possible to post the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be posted as soon as possible.

Both the published and posted notices shall include the following information:

- a.* The name and date of the election for which ballots will be available.
- b.* The location(s) of the satellite absentee voting station(s).
- c.* The dates and times that the station(s) will be open.
- d.* The precincts for which ballots will be available.
- e.* An announcement that voter registration forms will be available for new registrations in the county and that changes in the registration records of people who are currently registered within the county may be made at any time.

If the satellite absentee voting station is located in a building with more than one public entrance, brief notices of the location of the satellite absentee voting station shall be posted on building directories, bulletin boards, or doors. These notices shall be posted no later than the time the station opens and shall be removed immediately after the satellite absentee voting station has ceased operation for an election.

**21.300(3) Staff.** Satellite absentee voting station workers may be selected from among the staff members of the commissioner's office, from the election board panel drawn up pursuant to Iowa Code

sections 49.15 and 49.16, or a combination of these two sources. Compensation of workers selected from the election board panel shall be at the rate provided in Iowa Code section 49.20.

At least three people shall be assigned to work at each satellite absentee voting station; more workers may be added at the commissioner's discretion. All workers must be registered voters of the county, and for primary and general elections the workers must be registered with a political party; however, workers not affiliated with any party may be assigned to work at a satellite absentee voting station as long as not more than one-third of the workers assigned to a particular satellite absentee voting station are not affiliated with a political party. For all elections, no more than a simple majority of the workers shall be members of the same political party.

People who are prohibited from working at the polls pursuant to Iowa Code section 49.16 may not work at satellite absentee voting stations.

**21.300(4) Oath required.** Before the first day of service at a satellite absentee voting station, each worker shall take an oath substantially in the form titled "Election Official/Clerk Oath" available on the state commissioner's Web site. The oath must be taken before each election.

**21.300(5) Suggested supplies for each satellite absentee voting station.** A list of supplies suggested for each satellite absentee voting station is available on the state commissioner's Web site.

**21.300(6) Ballot transport and storage.** At the commissioner's discretion the ballots may be transported between the commissioner's office and the satellite absentee voting station by the workers who will be on duty that day, or by two people of different political parties who have been designated as couriers by the commissioner. It is not necessary for the same people to transport the ballots in both directions.

If the ballots are transported by the satellite absentee voting station workers, two workers who are members of different political parties and the ballots must travel together in the same vehicle.

Ballots may be stored at the satellite absentee voting station during hours when the station is closed only if they are kept in a locked cabinet or container. The cabinet must be located in a room which is kept locked when not in use. Voted absentee ballots must be delivered to the commissioner's office at least once each week.

**21.300(7) Ballot receipts.** Satellite absentee voting station workers shall sign receipts for the ballots taken to the satellite absentee voting site. The receipt shall be substantially in the form titled "Satellite Absentee Voting Station Ballot Record and Receipt" available on the state commissioner's Web site. A copy of the ballot record and receipt shall be retained in the commissioner's office. The original shall be sent with the ballots to the satellite absentee voting station.

**21.300(8) Arrangement of the satellite absentee voting station.** Protection of the security of the ballots (both voted and unvoted) and the secrecy of each person's vote shall be considered in the arranging of the satellite absentee voting station.

*a. Security.* The satellite absentee voting station shall be arranged so that ballots are protected against removal from the station by unauthorized persons.

*b. Voting area.* Voting booths without curtains shall be placed so that passersby and other voters may not walk directly behind a person using the booth. At least one voting booth must be accessible to the disabled. The booth must be designed to accommodate a person seated in a chair or wheelchair. A chair must be provided for voters who wish to sit down while voting or waiting in line.

*c. Campaign signs and electioneering.* No signs supporting or opposing any candidate or question on the ballot shall be posted on the premises of or within 300 feet of any outside door of any building affording access to a satellite absentee voting station during the hours when absentee ballots are available at the satellite absentee voting station. No electioneering shall be allowed within the sight or hearing of voters while they are at the satellite absentee voting station.

**21.300(9) Operation of the satellite absentee voting station.** At all times the satellite absentee voting station shall have at least two workers present to preserve the security of the ballots, both voted and unvoted.

**21.300(10) Voter registration at the satellite absentee voting station.** Each satellite absentee voting station shall provide forms necessary to register voters, including the oaths necessary to process voters registering pursuant to Iowa Code section 48A.7A, and to record changes in voter registration records.

Workers shall also be provided with a method of verifying whether people applying for absentee ballots are registered voters.

The commissioner may provide a list of registered voters in the precincts served by the station. The list may be on paper or contained in a computerized data file. As an alternative, the commissioner may provide a computer connection with the commissioner's office.

**21.300(11) Procedure for issuing absentee ballot.** The instructions for absentee voting are available on the state commissioner's Web site and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's Web site.

**21.300(12) Closing a station.** The instructions for closing a satellite absentee voting station are available on the state commissioner's Web site and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's Web site.

**21.300(13) Use of I-Voters at satellite absentee voting stations.** Any county commissioner who wants to use the I-Voters statewide voter registration database at a satellite absentee voting station shall:

*a.* Complete an application to use I-Voters at a satellite absentee voting station. A separate application shall be completed for each satellite absentee voting station. The application is available on the state commissioner's Web site. The application shall be submitted at least seven days before the opening of the satellite absentee voting station. If it is not possible to submit an application at least seven days before the station opens due to the receipt of a petition, the application shall be submitted as soon as possible. The application will be considered by the state commissioner as soon as practicable after it is received. The state commissioner reserves the right to reject an application for any reason or to limit the number of users at any satellite absentee voting station.

*b.* Use a cellular telephone service or a wired Internet connection to connect to the Internet from the satellite absentee voting station. If the county uses a wired Internet connection, the commissioner shall use either a regular or a wireless router between the wired Internet connection and the county's computers. Connection to a facility's wireless network is not permitted.

*c.* Configure any wireless routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

- (1) A minimum 10-character password must be assigned to the router administration screens.
- (2) WPA (AES) security for wireless connections with a minimum 10-character password must be used.
- (3) Remote management of the router must be prohibited.
- (4) Universal Plug & Play must be turned off.
- (5) Port forwarding on the router must not be disabled.
- (6) Unauthorized connections shall be prohibited, including smartphones, personal digital assistants (PDAs) and laptops.

*d.* Configure any wired routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

- (1) Remote management of the router must be prohibited.
- (2) Universal Plug & Play must be turned off.
- (3) Port forwarding on the router must not be disabled.
- (4) Unauthorized connections shall be prohibited, including smartphones, PDAs and laptops.
- (5) Administrator passwords for the routers must be changed from the default passwords, and standard county password policies shall be followed.

*e.* Laptops used at a satellite absentee voting station shall be configured as follows:

- (1) The hard drives must be encrypted.
- (2) The operating system must be fully supported by the operating system vendor.
- (3) The operating system must be fully patched.
- (4) Antivirus software and anti-spyware must be installed and up to date.

(5) A full antivirus and anti-spyware scan must be done during the week before a laptop is used at a satellite absentee voting station and at least once a week thereafter while the laptop is being used at satellite absentee voting stations.

(6) The administrator password must be changed from the default password.

(7) Guest user accounts must be disabled or renamed.

(8) File/print sharing must be turned off, and remote access must be disabled.

(9) Bluetooth must be turned off.

(10) The Windows firewall must be turned on.

*f.* Laptops connected to I-Voters at a satellite absentee voting station shall never be left unattended.

*g.* Laptops connected to I-Voters at a satellite absentee voting station shall not have any USB memory sticks or CDs/DVDs inserted in the computer after the virus scan is conducted pursuant to subrule 21.300(13), paragraph “e.”

*h.* Laptops connected to I-Voters at a satellite absentee voting station shall not be used to visit any other Web sites.

*i.* No software applications, other than I-Voters, shall be used while the I-Voters application is in use at a satellite absentee voting station.

**21.300(14) Provisional voting at satellite absentee voting stations.** If it is necessary for a voter to cast a provisional ballot at a satellite absentee voting station, the voter shall receive the same ballot style as the majority of the voters would receive in the precinct in which the satellite absentee voting station is located.

This rule is intended to implement Iowa Code section 53.11.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9139B, IAB 10/6/10, effective 9/16/10; ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.301(53) Absentee ballot requests from voters whose registration records are “inactive.”**

**21.301(1) *In person.*** Absentee voters whose registration records are “inactive” and who appear in person to vote, either at the office of the commissioner or at a satellite absentee voting station, shall be assigned a status of “active” after requesting an absentee ballot.

**21.301(2) *By mail.*** When a request for an absentee ballot is received by mail from a voter whose registration record has been made “inactive” pursuant to Iowa Code section 48A.29, the commissioner shall update the voter’s residential address to the address listed on the absentee ballot request if requested by the voter and assign the voter a status of “active.”

**21.301(3) *Absentee ballots received from a voter subsequently assigned “inactive” status.***

*a.* The commissioner shall mail an absentee ballot to a voter if a voter’s status is changed to “inactive” between the time the voter requested an absentee ballot and the time the absentee ballots are ready to mail. The commissioner shall also separately notify the voter of the requirement to provide identification before the ballot can be counted pursuant to paragraph 21.301(3) “c.”

*b.* The commissioner shall set aside the absentee ballot of a voter whose status is changed to “inactive” pursuant to Iowa Code section 48A.26, subsection 6, after the voter has submitted the voter’s absentee ballot.

*c.* Pursuant to Iowa Code section 53.31, the commissioner shall notify any voter assigned an “inactive” status subsequent to requesting or returning an absentee ballot that the voter’s absentee ballot has been challenged and may be counted only if the voter personally delivers or mails a copy of the voter’s identification as listed in Iowa Code section 48A.8 to the commissioner’s office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter’s identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.

This rule is intended to implement Iowa Code section 48A.29 and sections 48A.26, 48A.37 and 53.25 as amended by 2009 Iowa Acts, House File 475.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.302(48A) In-person absentee registration.** After the close of voter registration for an election, a person who appears in person to apply for and vote an absentee ballot may register to vote if the person provides proof of identity and residence in the precinct in which the voter intends to vote using identification that meets the requirements set forth in Iowa Code section 48A.7A. The voter must also complete an oath of person registering on election day. If the voter does not have appropriate identification, the voter may establish identity and residence using the attestation procedure in Iowa Code section 48A.7A, subsection 1, paragraph “c.” Otherwise, the person may cast only a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballot envelopes shall be used.

This rule is intended to implement Iowa Code section 48A.7A.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.303(53) Mailing absentee ballots.** The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter’s residence, as indicated by the residential address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner’s records.

5. Return envelope. The return envelope, which shall be addressed to the commissioner’s office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner’s records. All domestic and UOCAVA return envelope flaps or backs shall also be printed or stamped with a notice in substantially the following form: “This ballot will only be eligible for counting if it is received by the auditor’s office before the polls close on election day or postmarked before election day and received by the deadline listed in the voting instructions included with this ballot. **Postmarks are not guaranteed!** Mail the ballot early to make sure it is received on time. Track the status of your absentee ballot at [www.sos.iowa.gov](http://www.sos.iowa.gov).”

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the I-Voters-assigned sequence number used to identify the absentee request in the commissioner’s records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in the form required by rule 721—22.250(52).

8. Receipt. The receipt form required by Iowa Code section 53.3, which may be printed on the instructions required by numbered paragraph “7” above.

This rule is intended to implement Iowa Code sections 53.8 and 53.17.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 0107C, IAB 4/18/12, effective 3/30/12]

**721—21.304(53) Absentee ballot requests from voters whose registration records are “pending.”** A voter who requests an absentee ballot and is assigned a status of “pending” must provide identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475.

**21.304(1) In-person applicants.** In-person applicants for absentee ballots assigned a status of “pending” must show identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, before casting a ballot. If an in-person applicant provides identification as required by Iowa Code section 48A.8 when casting an absentee ballot in person, the commissioner shall assign the voter’s registration record a status of “active” and provide the voter with an absentee ballot. Voters who are unable to provide identification as required by Iowa Code section 48A.8 shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

**21.304(2) By-mail applicants.** By-mail applicants for absentee ballots assigned a status of “pending” must either come to the commissioner’s office and show identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, or mail a photocopy of identification pursuant

to Iowa Code section 48A.8 before the voter's absentee ballot can be counted by the absentee and special voters precinct board. The commissioner shall mail the voter a notice informing the voter of the requirement to provide one of the identification documents listed in Iowa Code section 48A.8 before the voter's absentee ballot can be considered for counting by the absentee and special voters precinct board. If a by-mail applicant provides identification as required by Iowa Code section 48A.8, the commissioner shall assign the voter's registration record a status of "active."

**21.304(3)** *By-mail absentee voters assigned a status of "pending" who do not provide identification prior to election day.* The ballot of a by-mail absentee voter assigned a status of "pending" who has not shown identification in person at the commissioner's office or provided a photocopy of identification by mail pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, shall be challenged by a member of the absentee and special voters precinct board on election day pursuant to Iowa Code section 53.31. The absentee and special voters precinct board shall immediately mail notice of the challenge to the voter. The notice shall include the deadline for the voter to provide identification pursuant to Iowa Code section 48A.8. If the voter provides identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter's ballot shall be considered for counting by the absentee and special voters precinct board. If the voter does not provide identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter's absentee ballot shall be rejected by the absentee and special voters precinct board. The voter shall be notified of the reason for rejection pursuant to Iowa Code section 53.25 as amended by 2009 Iowa Acts, House File 475.

This rule is intended to implement Iowa Code section 53.31 and sections 48A.8 and 53.25 as amended by 2009 Iowa Acts, House File 475.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.305(53) Confirming commissioner's receipt of an absentee ballot on election day.** If a voter's name is on the absentee list prepared pursuant to Iowa Code sections 49.72 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196, and the voter appears at the polling place to vote on election day, the precinct election officials may contact the commissioner's office to confirm whether the commissioner has received the voter's absentee ballot. If the precinct election officials are able to confirm either that the commissioner has not received the voter's absentee ballot or that the voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the precinct election officials shall permit the voter to cast a regular ballot at the polling place.

After confirming that a voter's absentee ballot has not been received or that a voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the commissioner shall mark the voter's absentee ballot as "Void" in the statewide voter registration system. The commissioner shall enter "Voted at polls" in the comment box that appears when the ballot is marked as "Void."

If a voter's absentee ballot is returned to the commissioner's office after being marked as "Void" pursuant to this rule, the absentee ballot shall be rejected by the absentee and special voters precinct board pursuant to Iowa Code section 53.25 because the voter cast a ballot in person at the polling place.

This rule is intended to implement Iowa Code sections 49.72, 49.81 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196.  
[ARC 8779B, IAB 6/2/10, effective 7/1/10]

**721—21.306 to 21.319** Reserved.

**721—21.320(53) Absentee voting by UOCAVA voters.** This rule applies only to absentee voting by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces."

**21.320(1) Definitions.** The following definitions apply to this rule:

"Armed forces," as used in this rule, is defined in Iowa Code section 53.37(3).

“FPCA” means the federal postcard absentee ballot application and voter registration form authorized for use in Iowa by Iowa Code section 53.38.

“UOCAVA voter” means any person who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.”

**21.320(2) Requests for absentee ballots.** All requests for absentee ballots shall be made in writing. Additional requirements for requesting absentee ballots and for processing the requests are set forth below.

*a. Forms.* UOCAVA voters may use the following official forms to request absentee ballots:

- (1) A federal postcard absentee ballot application and voter registration form (FPCA).
- (2) A state of Iowa official absentee ballot request form.
- (3) For general elections only, a proxy absentee ballot application prescribed by the state commissioner of elections and submitted pursuant to Iowa Code Supplement section 53.40(1) “b.”

*b. Form not required.* UOCAVA voters may request absentee ballots in writing without using an official form. The written request shall be honored if it includes all of the following information about the voter:

- (1) Name.
- (2) Age or date of birth.
- (3) Iowa residence, including street address (if any) and city.
- (4) Address to which the ballot shall be sent.
- (5) Township of residence, if applicable.
- (6) County of residence.
- (7) Party affiliation, if the request is for a ballot for a primary election.
- (8) Signature of voter.
- (9) Statement explaining why the voter is eligible to receive ballots under the provisions of Iowa Code chapter 53, division II. For example, “I am a U.S. citizen living in France.”

*c. Methods for transmitting absentee ballot requests.* UOCAVA voters may transmit absentee ballot requests by any of the following methods:

- (1) Mail.
- (2) Personal delivery by the voter or a person designated by the voter.
- (3) Facsimile machine.
- (4) Scanned application form or letter transmitted by E-mail. Requests by E-mail that do not include an image of the voter’s written signature as defined by Iowa Code section 39.3, subsection 17, shall not be accepted.

*d. Original request not needed.* If the request is sent by E-mail or by fax, it is not necessary for the UOCAVA voter to send to the commissioner the original copy of the FPCA or other official form or written request for an absentee ballot.

*e. Multiple requests from the same person.* Before the ballot is ready to mail, if the commissioner receives more than one request for an absentee ballot for a particular election (or series of elections) by or on behalf of a UOCAVA voter, the last request received shall be the one honored. However, if one of the requests is for a general election ballot and is made using the proxy absentee ballot application process permitted by Iowa Code Supplement section 53.40(1) “b,” the request received from the voter shall be the one honored, not the proxy request.

*f. Subsequent request after ballot has been sent.* Not more than one ballot shall be transmitted by the commissioner to any UOCAVA voter for a particular election unless, after the ballot has been mailed or transmitted electronically pursuant to rule 721—21.320(53), the voter reports a change in the address, E-mail address or fax number to which the ballot should be sent. The commissioner shall void the original absentee ballot request and include a comment in the voter’s registration record, noting the I-Voters-sequence number of the original ballot and noting that a replacement ballot was sent to an updated address. If the original ballot is returned voted, it shall be counted only if the replacement ballot does not arrive before the deadline for receiving absentee ballots set forth in Iowa Code section 53.17.

*g. Requests for absentee ballots through the end of the calendar year.* 2009 Iowa Code Supplement section 53.40 as amended by 2010 Iowa Acts, Senate File 2194, permits UOCAVA voters to request the commissioner to send absentee ballots for all elections as permitted by state law. In response to an absentee ballot request in which the UOCAVA voter requests ballots for all elections, the commissioner shall send the applicant a ballot for each election held after the request is received through the end of the calendar year in which the request is received. If the applicant does not request ballots for all elections or does not specify which elections the request is for, the commissioner shall send the applicant a ballot only for federal elections through the end of the calendar year in which the request is received.

(1) When an absentee ballot for a UOCAVA voter is returned as undeliverable by the United States Postal Service or an E-mail server or a fax cannot be transmitted to the number provided by the voter, the commissioner shall do the following:

1. Verify that the commissioner's office sent the absentee ballot to the address, E-mail address or fax number requested by the UOCAVA voter. If the absentee ballot was sent incorrectly, the commissioner shall correct the error and immediately transmit a new absentee ballot.

2. If the absentee ballot was sent to the correct mailing address, E-mail address or fax number, the commissioner shall E-mail the voter if the commissioner has an E-mail address on file to inform the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address if the voter wishes to continue to receive absentee ballots.

3. If the absentee ballot was sent to the correct mailing address, E-mail address or fax number, the commissioner shall also attempt to contact the voter by sending a forwardable notice to both the voter's residential address and the voter's absentee mailing address informing the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address, E-mail address or fax number if the voter wishes to continue to receive absentee ballots.

4. If the absentee ballot was mailed, E-mailed or sent to the correct address or fax number, the commissioner shall terminate the voter's current FPCA request and shall not send the voter any further ballots unless a new absentee ballot request is received from the voter.

(2) If the voter provides a new FPCA with a new mailing address, E-mail address or fax number before election day, the commissioner shall enter a new absentee request on the voter's registration record and transmit the ballot via the method requested by the voter. The voter may request that the commissioner transmit the ballot electronically pursuant to subrule 21.320(3).

**21.320(3) *Electronic transmission of absentee ballots to UOCAVA voters.***

*a.* Electronic transmission of absentee ballots by facsimile machine or by E-mail is limited to UOCAVA voters who specifically ask for this service. A UOCAVA voter who asks for electronic transmission of an absentee ballot may request this service for all elections for which the person is qualified to vote or for specific elections either individually or for a specific period of time. The commissioner may employ FVAP's secure transmission program to facilitate electronic transmission of absentee ballots to UOCAVA voters.

*b.* Forms. The state commissioner shall provide the following forms and instructions for the electronic transmission of absentee ballots to UOCAVA voters:

(1) Instructions to the county commissioners of elections for providing this service.

(2) Instructions to the voter for marking and returning the ballot.

(3) The affidavit envelope form, which can be printed by the voter on an envelope and used for the voter's declaration of eligibility and voter registration application, if necessary.

(4) The return envelope form, which can be printed by the voter on an envelope and used to return the ballot, postage paid through the FPO/APO postal service.

**21.320(4) *Ballot return by electronic transmission.***

*a.* Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are located in an area designated as an imminent danger pay area or for active members of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard who are located outside the United States or any of its territories, as provided in subrule 21.1(13). In addition, the absentee ballot may be returned via electronic transmission only if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code

section 53.13, the voter shall sign a statement in substantially the following form: “I understand that by returning this ballot by electronic transmission, my voted ballot will not be secret. I hereby waive my right to a secret ballot.”

*b.* When an absentee ballot is received via electronic transmission, the person receiving the transmission shall examine it to determine that all pages have been received and are legible. The person receiving an electronic transmission shall not reveal how the voter voted.

*c.* The absentee ballot shall be sealed in an envelope marked with the voter’s name. The affidavit of the voter and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots.

*d.* The deadline for returning an absentee ballot pursuant to this subrule is the close of polls on election day, Central Standard Time.

**21.320(5)** *Original signature for voter registration record.* Voters must submit original signatures on voter registration applications unless otherwise provided by this subrule.

*a. UOCAVA voters ineligible to return voted balloting materials electronically.* UOCAVA voters who are not currently registered to vote in a county and are not eligible to return voted ballot materials electronically pursuant to this rule shall submit an original, signed application for voter registration. The application may be the Iowa voter registration application, the National Mail Voter Registration Form, a Federal Post Card Application, a declaration/affirmation accompanying a federal write-in absentee ballot or a signature on a voted UOCAVA absentee ballot affidavit. Ballots transmitted to UOCAVA voters who do not submit an original voter registration application shall not be counted, and the voter who requested the ballot shall be assigned a status of “Incomplete” with a status reason “No Signature” following the election for which the ballot was requested.

*b. UOCAVA voters eligible to return voted balloting materials electronically.* UOCAVA voters who are not currently registered to vote and are eligible to return voted ballot materials electronically pursuant to this rule shall submit a signed, scanned application for voter registration. The application may be the Iowa voter registration application, the National Mail Voter Registration Form, a Federal Post Card Application, a declaration/affirmation accompanying a federal write-in absentee ballot or a signature on a voted UOCAVA absentee ballot affidavit. Ballots transmitted to UOCAVA voters who do not submit signed, scanned voter registration applications shall not be counted, and the voter who requested the ballot shall be assigned a status of “Incomplete” with a status reason “No Signature” following the election for which the ballot was requested.

This rule is intended to implement Iowa Code sections 53.40 and 53.46.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8777B**, IAB 6/2/10, effective 5/7/10; **ARC 9989B**, IAB 2/8/12, effective 1/17/12; **ARC 0107C**, IAB 4/18/12, effective 3/30/12]

**721—21.321 to 21.349** Reserved.

**721—21.350(53) Absentee ballot processing for elections held following July 1, 2007.** Rescinded IAB 9/26/07, effective 9/7/07.

**721—21.351(53) Receiving absentee ballots.** The commissioner shall carefully account for and protect all absentee ballots returned to the office.

**21.351(1) Note receipt.** The commissioner shall write or file-stamp on the return carrier envelope the date that the ballot arrived in the commissioner’s office. The commissioner shall also record receipt of the ballot in I-Voters.

**21.351(2) Temporary storage.** If necessary, the commissioner shall immediately put the ballot into a secure container, such as a locked ballot box, until the ballots can be moved to the secure storage area.

**21.351(3) Secure area.** The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for completeness and defects.

[**ARC 8779B**, IAB 6/2/10, effective 7/1/10]

**721—21.352(53) Review of returned affidavit envelopes.**

**21.352(1) *Personnel.*** The commissioner may assign staff members to complete the review of returned affidavit envelopes. Only persons who have been trained for this responsibility shall be authorized to review affidavit envelopes.

**21.352(2) *Affidavit envelopes reviewed.*** The affidavit envelopes of all absentee ballots returned to the commissioner's office shall be reviewed, including those of ballots returned by the bipartisan team delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds that any absentee affidavits returned from any health care facility are incomplete or defective, the commissioner shall send the bipartisan delivery team back to assist voters as needed with completing affidavits or to deliver any replacement ballots.

**21.352(3) *Instructions.*** Each reviewer shall receive instructions in substantially the form prepared by the state commissioner of elections. The instructions shall provide basic security and procedural guidance and include a method for accounting for all returned absentee ballots. The prohibitions shall include:

- a. Leaving unsecured ballots unattended.
- b. Altering any information on any affidavit.
- c. Adding any information to any affidavit, except as specifically required to comply with the requirements of the law.
- d. Sealing any affidavit envelope found open.
- e. Discarding any return carrier envelopes, ballots, or affidavit envelopes returned by voters.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10]

**721—21.353(53) Opening the return carrier envelopes.** The commissioner may direct a staff member to open the return carrier envelopes either manually or with an automatic letter opener, if one is available. Only a trained reviewer may remove the contents of the envelope.

**721—21.354(53) Review process.** A reviewer shall remove the contents from only one return carrier envelope at a time.

**21.354(1) *Return carrier envelopes preserved.*** The return carrier envelopes shall be stored in a manner that will facilitate their retrieval, if necessary. They shall be stored for 22 months for federal elections and 6 months for local elections.

**21.354(2) *Examination of affidavit envelope.*** The reviewer shall make sure that:

- a. The affidavit envelope is sealed, apparently with the ballot inside.
- b. The affidavit envelope has not been opened and resealed.
- c. The affidavit includes all of the following:
  - (1) A signature.
  - (2) For primary elections only, political party affiliation.

**21.354(3) *No defects or incomplete information.*** If the reviewer finds that the required information on the affidavit is complete and that there are no defects that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the affidavit envelope into a group of envelopes to be retained in the secure storage area with others that require no further attention until they are delivered to the absentee and special voters precinct board.

**21.354(4) *Defective and incomplete affidavits.*** The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or affidavit envelope:

- a. The commissioner shall contact the voter immediately if the affidavit envelope is defective. An affidavit envelope is defective if:
  - (1) The absentee ballot is not enclosed in the affidavit envelope.
  - (2) The affidavit envelope is not sealed.
  - (3) The affidavit envelope has been opened and resealed.
  - (4) The voter submits a change of address in a new precinct after returning a voted absentee ballot.
- b. The commissioner shall contact the voter within 24 hours if the affidavit is incomplete. An incomplete affidavit lacks:

- (1) The signature of the voter.
- (2) For primary elections only, political party affiliation.

c. If an affidavit envelope has flaws that are included in both paragraphs “a” and “b,” the commissioner shall follow the process in paragraph “a.”

**21.354(5) Defective and incomplete affidavits stored separately.** The commissioner shall store the defective and incomplete affidavit envelopes separately from other returned absentee ballot affidavit envelopes.

a. Incomplete affidavit envelopes requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective affidavit envelopes must be attached to the replacement ballot (if any) for review by the absentee and special voters precinct board.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10]

**721—21.355(53) Notice to voter.** When the commissioner finds an incomplete absentee ballot affidavit or finds a defective affidavit envelope, the commissioner shall notify the voter in writing and, if possible, by telephone and by E-mail. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

**21.355(1) Notice to voter—incomplete ballot affidavit.** Within 24 hours after receipt of an absentee ballot with an incomplete affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

a. Explanation of missing required information (lack of signature or, for primary elections only, political party affiliation).

b. The voter’s options for correcting the affidavit as follows:

- (1) Completing the affidavit at the commissioner’s office by 5 p.m. the day before the election;
- (2) Requesting a replacement ballot pursuant to Iowa Code section 53.18; or
- (3) Voting at the polls on election day.

c. Address of commissioner’s office, business hours and contact information.

**21.355(2) Notice to voter—defective ballot affidavit.** Immediately after determining that an absentee ballot affidavit envelope is defective, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

a. Reason for defect.

b. The voter’s options for correcting the defect as follows:

- (1) The voter may request a replacement ballot;
- (2) The voter may vote at the polls on election day; or
- (3) In the event an absentee ballot becomes defective because a voter reregisters to vote in a new precinct or county after casting an absentee ballot, the voter may correct the defect by reregistering to vote in the precinct in which the absentee ballot was cast, provided the voter can still claim residence for voter registration purposes in the precinct in which the absentee ballot was cast pursuant to Iowa Code sections 48A.5 and 48A.5A. If a voter reregisters after the voter registration deadline listed in Iowa Code section 48A.9 for a particular election, the voter shall be required to follow election day registration procedures as set forth in Iowa Code section 48A.7A, subsection 3.

c. Process for requesting a replacement ballot.

d. Address of commissioner’s office, business hours and contact information.

**21.355(3) Telephone contact.** If the voter has provided a telephone number, either on the absentee ballot application or on the voter’s registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

a. Name of the person making the call.

b. Date and time of the call.

c. Whether the person making the call spoke to the voter.

**21.355(4) E-mail contact.** If the voter has provided an E-mail address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by E-mail. The E-mail message shall be the same message that was mailed to the voter. A copy of the E-mail message shall be attached to the checklist.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10; ARC 9989B, IAB 2/8/12, effective 1/17/12]

Rules 721—21.351(53) through 721—21.355(53) are intended to implement 2009 Iowa Code Supplement section 53.18 as amended by 2010 Iowa Acts, Senate file 2196, and section 53.25.

**721—21.356 to 21.358** Reserved.

**721—21.359(53) Processing absentee ballots before election day.** The commissioner may only direct the absentee and special voters precinct board to open affidavit envelopes on the Monday before election day under the following circumstances:

For any election, only if the commissioner has provided secrecy envelopes (or folders) pursuant to subrule 21.359(1) and the commissioner determines removing secrecy envelopes from affidavit envelopes is necessary due to the quantity of voted absentee ballots received as set forth in Iowa Code section 53.23, subsection 3, paragraph "a."

For general elections, if the commissioner convenes the absentee and special voters precinct board pursuant to Iowa Code section 53.23, subsection 3, paragraph "c," to begin tabulation of absentee ballots.

**21.359(1)** The secrecy envelope shall completely cover the ballot. The envelope shall have the following message printed on it using at least 24-point type:

**Secrecy Envelope**  
After you vote, put your ballot in here.

**21.359(2)** When the absentee and special voters precinct board convenes to begin processing absentee ballots, the board shall first review voters' affidavits to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected for the reasons set forth in 2009 Iowa Code Supplement section 53.25. Affidavit envelopes containing ballots that are rejected shall be stored in the manner prescribed by Iowa Code section 53.26. The applications submitted for rejected ballots shall be stored in a secure location for the time period required by Iowa Code section 50.19.

**21.359(3)** The affidavit envelopes containing ballots that have been accepted for counting by the absentee and special voters precinct board shall be stacked with the affidavits facing down. The envelopes shall be opened and the secrecy envelope containing the ballot shall be removed.

**21.359(4)** If a voter has not enclosed the ballot in a secrecy envelope and the ballot has not been folded in a manner that conceals all votes marked on the ballot, the officials shall put the ballot in a secrecy envelope without examining the ballot.

**21.359(5)** The following security procedures shall be followed:

*a.* The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2. If, after receiving notice from the commissioner pursuant to Iowa Code section 53.23, subsection 3, paragraph "a," either or both political parties fail to appoint an observer, the commissioner may continue with the proceedings.

*b.* No ballots shall be counted or examined before election day except as provided in Iowa Code section 53.23, subsection 3, paragraph "c," as amended by 2009 Iowa Acts, House File 670, section 1.

*c.* When secrecy envelopes are removed from affidavit envelopes on the day before an election and not tabulated as permitted by Iowa Code section 53.23, subsection 3, paragraph "c," as amended by 2009 Iowa Acts, House File 670, section 1, the number of secrecy envelopes shall be recorded before the ballots are stored and the number shall be verified before any ballots are removed from the secrecy

envelopes on election day. The ballots may be bundled and sealed in groups of a specified number to make counting easier.

This rule is intended to implement Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10]

**721—21.360(53) Failure to affix postmark date.** Rescinded IAB 4/20/11, effective 3/31/11.

**721—21.361(53) Rejection of absentee ballot.** The absentee and special voters precinct board shall reject absentee ballots without opening the affidavit envelope if any of the conditions cited in Iowa Code section 53.25 as amended by 2009 Iowa Acts, House File 475, exist.

**21.361(1)** An absentee ballot shall be rejected if the affidavit lacks the voter's signature.

**21.361(2)** An absentee ballot shall be rejected if the applicant is not a duly registered voter in the precinct in which the ballot is cast. "Precinct" means a precinct established pursuant to Iowa Code sections 49.3 through 49.5 or a consolidated precinct established by the commissioner pursuant to Iowa Code section 49.11, subsection 3, paragraph "a."

**21.361(3)** An absentee ballot shall be rejected if the affidavit envelope is open.

**21.361(4)** An absentee ballot shall be rejected if the affidavit envelope has been opened and resealed.

**21.361(5)** An absentee ballot shall be rejected if the affidavit envelope contains more than one ballot of any kind.

**21.361(6)** An absentee ballot shall be rejected if the voter has voted in person at the polls.

**21.361(7)** An absentee ballot shall be rejected if in primary elections the voter does not declare a party affiliation on the voter's affidavit.

This rule is intended to implement Iowa Code sections 49.9 and 53.14 and section 53.25 as amended by 2009 Iowa Acts, House File 475.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.362 to 21.369** Reserved.

**721—21.370(53) Training for absentee ballot couriers.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.371(53) Certificate.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.372(53) Frequency of training.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.373(53) Registration of absentee ballot couriers.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.374(53) County commissioner's duties.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.375(53) Absentee ballot courier training.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.376(53) Receiving absentee ballots.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.377 to 21.399** Reserved.

DIVISION IV  
INSTRUCTIONS FOR SPECIFIC ELECTIONS

**721—21.400(376) Signature requirements for certain cities.** This rule applies to cities which have all of the following characteristics:

1. Nomination procedures under Iowa Code section 376.3 are used. (This includes cities with primary or runoff election provisions. It does not include cities with nominations under Iowa Code chapter 44 or 45.)

2. Some or all council members are voted upon by the electors of wards, rather than by the electors of the entire city.

3. Ward boundaries have been changed since the last regular city election at which the ward seat was on the ballot.

4. The number of wards has not changed.

Calculation of the number of signatures for ward seats shall use the vote totals from the wards as the wards were configured at the time of the last regular city election at which the ward seat was on the ballot.

This rule is intended to implement Iowa Code section 376.4.

**721—21.401(376) Signature requirements in cities with primary or runoff election provisions.** In cities using the provisions of Iowa Code section 376.4 for nomination of candidates and in which more than one council member was elected at-large at the last preceding regular city election, the number of signatures shall be calculated by the following formula:

V = the total number of votes cast for all candidates for council member at-large at the last regular city election;

E = the number of people to be elected at the last regular city election;

$$\frac{V}{E} \times .02 = \text{the number of signatures needed by each candidate in the next regular city election.}$$

This rule is intended to implement Iowa Code section 376.4.

**721—21.402(372) Filing deadline for charter commission appointment petition.** If a special election has been called by a city to present to the voters the question of adopting a different form of city government, receipt by the city council of a petition requesting appointment of a charter commission shall stay the special election if the petition is received no later than 5 p.m. on the Friday preceding the date of the special election.

This rule is intended to implement Iowa Code section 372.3.

**721—21.403(81GA, HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections.**

**21.403(1) Notice to the commissioner.** At least 60 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election.

*a.* If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

*b.* No special city elections to fill vacancies for cities that may be required to conduct primary elections shall be held with the general election, with the primary election, or with the annual school election. To do so would be contrary to the provisions of Iowa Code section 39.2.

**21.403(2) Election calendar.** The election calendar shall be adjusted as follows:

*a.* The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the fifty-third day before the election.

*b.* The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the fifty-third day before the election.

*c.* A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the fiftieth day before the election.

*d.* A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the fiftieth day before the election.

*e.* The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

**721—21.404(81GA, HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements.** This rule applies to cities that have adopted by ordinance one of the following options: nominations under Iowa Code chapter 44 or chapter 45, or a runoff election requirement if no candidate in the special election receives a majority of the votes cast.

**21.404(1) Notice to the commissioner.** At least 32 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

**21.404(2) Special elections to fill vacancies held in conjunction with the general election.** If the proposed date of the special election coincides with the date of the general election, the council shall give notice of the proposed date of the special city election not later than 76 days before the date of the general election. Candidates shall file nomination papers with the city clerk not later than 5 p.m. on the seventieth day before the general election. The city clerk shall deliver the nomination papers accepted by the clerk not later than 5 p.m. on the sixty-ninth day before the general election. Objection and withdrawal deadlines shall be 64 days before the general election, the same as the deadlines for candidates who file their nomination papers with the commissioner. Hearings on objections shall be held as soon as possible in order to facilitate printing of the general election ballot.

**21.404(3) Election calendar.** If the special election date is not the same as the date of the general election, the election calendar shall be adjusted as follows:

*a.* The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the twenty-fifth day before the election.

*b.* The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the twenty-fifth day before the election.

*c.* A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the twenty-second day before the election.

*d.* A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the twenty-second day before the election.

*e.* The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

**721—21.405(69) Special elections to fill a vacancy in the office of representative in Congress.** This rule establishes the special election calendar in the event a vacancy occurs in the office of representative in Congress that must be filled by special election pursuant to Iowa Code section 69.14.

**21.405(1) Notice of election.** The governor shall provide not less than 76 days' notice of a special election to fill a vacancy in the office of representative in Congress.

**21.405(2) Political party convention deadline.** A political party candidate to be voted on at a special election to fill a vacancy in the office of representative in Congress shall be nominated by a convention duly called by the district central committee not less than 62 days prior to the date set for the special election.

**21.405(3) Candidate filing deadline.** Nominations made pursuant to Iowa Code chapter 43, 44 or 45 shall be filed in the office of the state commissioner not later than 5 p.m. on the sixty-second day prior to the date set for the special election.

**21.405(4) Candidate certification deadline.** Names of candidates nominated for the special election shall be certified at the earliest practicable time to the appropriate commissioners of election as required by Iowa Code section 43.88.

**21.405(5) Candidate objection deadline.** Written objections to the legal sufficiency of a nomination petition filed pursuant to Iowa Code chapter 45 or a certificate of nomination filed pursuant to Iowa Code chapter 43 or 44 shall be in writing and shall be filed with the state commissioner no later than 5 p.m. on the sixtieth day prior to the election.

**21.405(6) Candidate withdrawal deadline.** A person who has filed nomination papers with the state commissioner as a candidate for a special election to fill a vacancy in the office of representative in Congress may withdraw by filing a written notice of withdrawal with the state commissioner no later than 5 p.m. on the sixtieth day prior to the election.

[ARC 0109C, IAB 5/2/12, effective 4/6/12]

**721—21.406 to 21.499** Reserved.

**721—21.500(277) Signature requirements for school director candidates.** The number of signatures required to be filed by candidates for the office of director in the regular school election shall be calculated from the number of registered voters in the district on May 1 of the year in which the election will be held. If May 1 falls on a day when the commissioner's office is closed for business, the commissioner shall use the number of registered voters in the district on the next day that the commissioner's office is open for business to determine the number of required signatures. Candidates who are seeking election in districts with election plans as specified in Iowa Code section 275.12(2) "b" and "c," where the candidate must reside in a specific director district, but is voted upon by all of the electors of the school district, shall be required to file a number of signatures calculated from the number of registered voters in the whole school district. Candidates who will be voted upon only by the electors of a director district shall be required to file a number of signatures calculated from the number of registered voters in the director district in which the candidate resides and seeks to represent.

If a special election is to be held to fill a vacancy on the school board, the number of registered voters on the date the commissioner receives notice of the special election shall be used to calculate the number of signatures required for the special election.

This rule is intended to implement Iowa Code sections 277.4 and 279.7.  
[ARC 9466B, IAB 4/20/11, effective 3/31/11]

**721—21.501 to 21.599** Reserved.

**721—21.600(43) Primary election signatures—plan three supervisor candidates.** Rescinded IAB 11/30/11, effective 1/4/12.

**721—21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors or method of election.** After the number of supervisors has been increased or decreased pursuant to Iowa Code section 331.203 or 331.204 or the method of electing supervisors has been changed from plan I or plan II to plan III since the last general election, the signatures for candidates at the next primary and general elections shall be calculated as follows:

**21.601(1) Primary election.** Divide the total number of party votes cast in the county at the previous general election for the office of president or for governor, as applicable, by the number of supervisor districts and multiply the quotient by .02. If the result of the calculation is less than 100, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 100, the minimum requirement shall be 100 signatures.

**21.601(2) Nominations by petition.** If the effective date of the change in the number of districts or method of election was later than the date specified in Iowa Code section 45.1(6), divide the total number of registered voters in the county on the date specified in Iowa Code section 45.1(6) by the number of supervisor districts and multiply the quotient by .01. If the result of the calculation is less than 150, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 150, the minimum requirement shall be 150 signatures.

This rule is intended to implement Iowa Code chapters 43 and 45.  
[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.602(43) Primary election—nominations by write-in votes for certain offices.**

**21.602(1)** The process described in subrule 21.602(2) shall be used to determine whether the primary election is conclusive and a candidate was nominated for partisan offices that are:

- a. Not mentioned in Iowa Code section 43.53 (township offices) or 43.66 (state representative and state senator), and
- b. For which no candidate's name was printed on the primary election ballot, and
- c. For which no candidate's name was printed on the primary election ballot in any previous primary election.

**21.602(2)** To be nominated by write-in votes, the person must receive at least 35 percent of the number of votes cast in the previous general election for that party's candidate for president of the United States or for governor, as the case may be, as follows:

- a. Statewide office: 35 percent of votes cast statewide.
- b. Congressional district: 35 percent of votes cast within the current boundaries of the Congressional district.
- c. County office, including plan II supervisors: 35 percent of the votes cast within the county.
- d. Plan III county supervisor: 35 percent of the votes cast within the supervisor district. If the boundaries of the supervisor district have changed since the previous general election, the number of votes cast within the county for the party candidate for president or for governor, as the case may be, shall be divided by the number of supervisor districts in the county; then the quotient shall be multiplied by 0.35.

**21.602(3)** If a write-in candidate is declared nominated at the canvass of votes, Iowa Code section 43.67, which requires the appropriate election commissioner to notify the candidate, shall apply.

This rule is intended to implement Iowa Code section 43.66.

**721—21.603 to 21.799** Reserved.

**721—21.800(423B) Local sales and services tax elections.**

**21.800(1)** Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.

- a. Each person signing the petition shall include the person's address (including street number, if any) and the date that the person signed the petition.
- b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local sales and services tax. In the notice the supervisors shall include the date of the election.
- c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph "c," but no sooner than 84 days after the date upon which notice is given to the commissioner.

**21.800(2)** As an alternative to the method of initiating a local option tax election described in subrule 21.800(1), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county auditor pursuant to Iowa Code section 423B.1, subsection 4, paragraph "b," requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph "c," but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.

**21.800(3)** Notice of local sales and services tax election.

- a. Not less than 60 days before the date that a local sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots, but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

- b. The city councils and the supervisors shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

- (1) The rate of the tax.

(2) The date the tax will be imposed (which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B). The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option tax revenues that will be used for property tax relief in the jurisdiction.

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

c. The information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.800(3)“b”(1), 21.800(3)“b”(3), and 21.800(3)“b”(4) above, the following information shall be substituted in the notice and on the ballot:

(1) One percent (1%) for the rate of the tax.

(2) Zero percent (0%) for property tax relief.

(3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

d. The notice of election provided for in Iowa Code section 49.53 as amended by 2009 Iowa Acts, House File 475, shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.801(423B) Form of ballot for local option tax elections.** If questions pertaining to more than one of the authorized local option taxes are submitted at a single election, all of the public measures shall be printed on the same ballot. The form of ballots to be used throughout the state of Iowa for the purpose of submitting questions pertaining to local option taxes shall be as follows:

**21.801(1) Local sales and services tax propositions.** Sales and services tax propositions shall be submitted to the voters of an entire county. If the election is being held for the voters to decide whether to impose the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of imposition shall be voted upon in all parts of the county where the tax has not been approved. If the election is being held for the voters to decide whether to repeal the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of repeal shall be voted upon in all parts of the county where the tax was previously imposed. If the election is being held for the voters to decide whether to change the rate or use of the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of rate or use change shall be voted upon in all parts of the county where the tax was previously imposed.

The ballot submitted to the voters of each incorporated area and the unincorporated area of the county shall show the intended uses for that jurisdiction. The ballot submitted to the voters in contiguous cities within a county shall show the intended uses and repeal dates, if not uniform, for each of the contiguous cities. The ballots shall be in substantially the following form:

a. Imposition question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize imposition of a local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_], at the



FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

c. Imposition question with an automatic repeal date for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize imposition of a local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_], at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[ \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[ \_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[ \_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

d. Imposition question with an automatic repeal date for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize imposition of a local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_%) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_%) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_: \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_: \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_: \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

e. Repeal question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES  NO

Summary: To authorize repeal of the \_\_\_\_\_ percent ( \_\_\_\_\_%) local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the

ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The \_\_\_\_ percent ( \_\_\_\_%) local sales and services tax shall be repealed in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

Revenues from the sales and services tax have been allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

f. Repeal question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize repeal of the \_\_\_\_ percent ( \_\_\_\_%) local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The \_\_\_\_ percent ( \_\_\_\_%) local sales and services tax shall be repealed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

Revenues from the sales and services tax have been allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

g. Rate change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to \_\_\_\_\_ percent ( \_\_\_\_\_%) in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The rate of the local sales and services tax shall be increased (or decreased) to \_\_\_\_\_ percent ( \_\_\_\_\_%) in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year). The current rate is \_\_\_\_\_ percent ( \_\_\_\_\_%).

Revenues from the sales and services tax are allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

h. Rate change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to \_\_\_\_\_ percent ( \_\_\_\_\_%) in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The rate of the local sales and services tax shall be increased (or decreased) to \_\_\_\_\_ percent ( \_\_\_\_\_%) in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax are allocated as follows:

FOR THE CITY OF \_\_\_\_\_: \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_: \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_: \_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

i. Use change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES  NO

Summary: To authorize a change in the use of the \_\_\_\_\_ percent ( \_\_\_\_\_%) local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The use of the \_\_\_\_\_ percent ( \_\_\_\_\_%) local sales and services tax shall be changed in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

Revenues from the sales and services tax are currently allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

j. Use change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize a change in the use of the \_\_\_\_ percent (\_\_\_\_%) local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The use of the \_\_\_\_ percent (\_\_\_\_%) local sales and services tax shall be changed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

k. Imposition question with differing automatic repeal dates for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize imposition of a local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_%) to be effective from \_\_\_\_\_ (month/day/year) until automatic repeal date specified.

A local sales and services tax shall be imposed in the following cities at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective from \_\_\_\_\_ (month/day/year) until the date specified below and the revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

The tax shall be repealed on \_\_\_\_\_ (month/day/year).

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF \_\_\_\_\_:

The tax shall be repealed on \_\_\_\_\_ (month/day/year).

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF \_\_\_\_\_:

The tax shall be repealed on \_\_\_\_\_ (month/day/year).

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

**21.801(2) For a local vehicle tax:**

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize the county of (insert name of county) to impose a local vehicle tax at the rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per vehicle and to exempt the following classes from the tax:

\_\_\_\_\_  
The revenues are to be expended as set forth in the text of the public measure.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using optical scan ballots which are read by automatic tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The county of \_\_\_\_\_, Iowa shall be authorized to impose a local vehicle tax at the rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per vehicle and to exempt the following classes of vehicles from the tax:

\_\_\_\_\_  
(insert percentage or dollar amount) of the revenues is/are to be used for property tax relief.

The balance of the revenues is to be expended for:

(List purposes for which remaining revenues will be used)  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.802(423B) Local vehicle tax elections.**

**21.802(1)** Petitions requesting imposition of local vehicle taxes shall be filed with the county board of supervisors.

a. Each person signing the petition shall add the person's address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition of a local vehicle tax. In the notice the supervisors shall include the date of the election.

c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph "c," but no sooner than 84 days after the date upon which notice is given to the commissioner.

**21.802(2)** Notice of local vehicle tax election. Not less than 60 days before the date that a local vehicle tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include a sample ballot, but shall include all of the information that will appear on the ballot. The notice of election provided for in Iowa Code section 49.53 as amended by 2009 Iowa Acts, House File 475, shall also be published at the time and in the manner specified in that section.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.803(82GA, HF2663) Revenue purpose statement ballots.** When a school district wishes to adopt, amend or extend the revenue purpose statement specifying the uses of the funds received from the secure an advanced vision for education fund, which is also referred to as the "penny sales and services tax for schools," the following ballot formats shall be used.

**21.803(1)** *Ballot to propose a revenue purpose statement.* The ballot for an election to propose a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

YES

NO

Summary: To adopt a revenue purpose statement specifying the use of money from the penny sales and services tax for schools received by \_\_\_\_\_ School District.

In the \_\_\_\_\_ School District, the following revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be adopted:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

**21.803(2)** *Ballot to amend a revenue purpose statement.* The ballot for an election to decide a change in the revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To authorize a change in the use of money from the penny sales and services tax for schools received by \_\_\_\_\_ School District.

In the \_\_\_\_\_ School District, the revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be changed.

Proposed uses. If the change is approved, the revenue purpose statement shall read as follows:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

Current uses. If the change is not approved, the funds shall continue to be used as follows:

(Insert here the current revenue purpose statement or list the current voter-approved uses of the funds by the school district, if the school infrastructure local option tax was adopted before the revenue purpose statement was required.)

**21.803(3) Ballot to extend a revenue purpose statement.** The ballot for an election to extend a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To authorize \_\_\_\_\_ School District to continue to spend money from the penny sales and services tax for schools for the previously approved uses until (specify date or insert amended date).

\_\_\_\_\_ School District is authorized to extend the current revenue purpose statement which specifies use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) received from (date) until (specify date or insert amended date). If an extension is not approved, the current revenue purpose statement will expire on (date). If an extension is approved, the revenue purpose statement will read as follows:

(Insert here the revenue purpose statement, including the new expiration date. If there is not a predicted expiration date, the ballot language must state that the revenue purpose statement will remain in effect until it is changed.)

This rule is intended to implement 2008 Iowa Acts, House File 2663, section 29.

**721—21.804 to 21.809** Reserved.

**721—21.810(34A) Referendum on enhanced 911 emergency telephone communication system funding.**

**21.810(1) Form of ballot.** The ballot for the E911 referendum shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber’s monthly phone bill if provided within (description of the proposed service area).

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

“Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber’s monthly phone bill if provided within the proposed E911 service area shown on the map below.”

**21.810(2) Cost of election.** The E911 service board shall pay the costs of the referendum election.

**21.810(3) Enhanced 911 emergency service funding referendum held in conjunction with a scheduled election.**

*a. Notice to commissioner.* The joint E911 service board shall notify the commissioner in writing, no later than the last day upon which nomination papers may be filed, of their intention to conduct the referendum with the scheduled election. The notice shall contain the complete text of the referendum question including the description of the proposed E911 service area. If a map is to be used on the ballot to describe the proposed E911 service area, the map shall be included. If the E911 service area includes more than one county, the service board shall notify the commissioner of each of the counties.

*b. Conduct of election.* All qualified electors in a precinct which is to be served, in whole or in part, by the proposed E911 service area, shall be permitted to vote on the question. The results of the referendum shall be canvassed by the board of supervisors at the time of the canvass of the scheduled election. The commissioner shall immediately certify the results to the joint E911 board.

*c. Service board duties.* If subscribers from more than one county are included within the proposed service area, the E911 service board shall meet as a board of canvassers to compile the results from the counties. The canvass shall be held on the tenth day following the election at a time established by the E911 service board. The service board shall prepare an abstract showing in words and numbers the number of votes cast for and against the question and, if a simple majority of those voting on the question has voted in the affirmative, the board shall declare that the surcharge has been adopted. Votes cast and not counted as a vote for or against the question shall not be used in computing the total vote cast for and against the question.

**21.810(4) Form of ballot for alternative surcharge.** The ballot for elections conducted pursuant to Iowa Code section 34A.6A shall be in the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber’s monthly phone bill if provided within (description of the proposed service area). The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line.

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

“Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be

determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber’s monthly phone bill if provided within the proposed E911 service area shown on the map below. The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line.”

This rule is intended to implement Iowa Code sections 34A.6 and 34A.6A.

**721—21.811 to 21.819** Reserved.

**721—21.820(99F) Gambling elections.**

**21.820(1)** Petitions requesting elections to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure shall be filed with the county board of supervisors and shall be substantially in the form posted on the state commissioner’s Web site titled “Petition Requesting Special Election.”

a. Within 10 days after receipt of a valid petition, the supervisors shall provide written notice to the county commissioner of elections directing the commissioner to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure in the county. The election shall be held on the next possible special election date pursuant to Iowa Code section 39.2, subsection 4, paragraph “a,” but no fewer than 46 days from the date notice is given to the county commissioner.

b. If a regularly scheduled or special election is to be held in the county on the date selected by the supervisors, notice shall be given to the commissioner no later than the last day upon which nomination papers may be filed for that election. If the excursion gambling boat or the gambling structure election is to be held with a local option tax election, the supervisors shall provide the commissioner at least 60 days’ written notice. Otherwise, the supervisors shall give at least 46 days’ written notice.

**21.820(2)** Form of ballot for election called by petition. Ballots shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved.

**21.820(3)** Form of ballot for elections to continue gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: Gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved.

Gambling games, with no wager or loss limits, on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010. If disapproved by a majority of the voters, the operation of gambling

games on an excursion gambling boat or at a gambling structure will end within 60 days of this election. (Iowa Code section 99F.7(10)“c”)

**21.820(4)** Ballot form to permit gambling games at existing pari-mutuel racetracks:  
(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

The operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved.

**21.820(5)** Abstract of votes. A copy of the abstract of votes of the election shall be sent to the state racing and gaming commission.

**21.820(6)** Ballot form for general election for continuing operation of gambling games at pari-mutuel racetracks:  
(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: The continued operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved.

The continued operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved. If approved by a majority of the voters, operation of gambling games may continue at (name of pari-mutuel racetrack) in \_\_\_\_\_ County until the question is voted on again at the general election in eight years. If disapproved by a majority of the voters, gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County will end.

**21.820(7)** Ballot form for general election for continuing gambling games on an excursion gambling boat or at a gambling structure:  
(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: The continued operation of gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County is approved.

The continued operation of gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County is approved. If approved by a majority of the voters, operation of gambling games may continue on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County until the question is voted on again at the general election in eight years. If disapproved by a majority of voters, gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County will end nine years from the date of the original issue of the license to the current licensee.

This rule is intended to implement Iowa Code section 99F.7 and Iowa Code Supplement section 99F.4D.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10]

721—21.821 to 21.829 Reserved.

**721—21.830(357E) Benefited recreational lake district elections.** Elections for benefited recreational lake districts shall be conducted according to the following procedures.

**21.830(1) Conduct of election.** It is not mandatory for the county commissioner of elections to conduct elections for a benefited recreational lake district. However, if both a public measure and a candidate election will be held on the same day in a benefited recreational lake district, the same person shall be responsible for conducting both elections. All elections must be held on a Tuesday.

**21.830(2) Ballots.** Ballots for benefited recreational lake district trustee elections shall be printed on opaque white paper, 8 by 11 inches in size. The ballots for the initial election for the office of trustee shall be in substantially the following form:

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**OFFICIAL BALLOT**  
**BENEFITED RECREATIONAL LAKE DISTRICT**  
**Election date**  
(facsimile signature of person responsible for printing ballots)

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**FOR TRUSTEE:**

**To vote:** Neatly print the names of at least three people you would like to see elected to the office of Trustee of the Benefited Recreational Lake District. You may vote for as many people as you wish, but you must vote for at least three.

(At the bottom of the ballot a space shall be included for the endorsement of the precinct election official, like this:)

Precinct official's endorsement: \_\_\_\_\_

---

**21.830(3) Canvass of votes.** On the Monday following the election, the board of supervisors shall canvass the votes cast at the election. At the initial election the supervisors shall choose three trustees from among the five persons who received the most votes. The results of benefited recreational lake district elections shall be certified to the district board of trustees.

This rule is intended to implement Iowa Code section 357E.8.

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◊ Two or more ARCs



CHAPTER 22  
VOTING SYSTEMS

[Prior to 7/13/88, see Secretary of State[750] Ch 10]

TESTING AND EXAMINATION OF VOTING EQUIPMENT

**721—22.1(52) Definitions for certification of voting equipment.**

*“Accredited independent test authority”* means a person or agency that was formally recognized by the National Association of State Election Directors as competent to design and perform qualification tests for voting system hardware and software. *“Accredited independent test authority”* also includes voting system test laboratories accredited by the Election Assistance Commission to test voting systems for compliance with federal voting system standards and guidelines, as required by the Help America Vote Act, Section 231.

*“Audio ballot”* means the presentation of the contents of a ballot on an electronic ballot marking device in a recorded format, played to the voter over headphones.

*“Automatic tabulating equipment”* means apparatus that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices and to count the votes marked on the ballots.

*“Ballot”* means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more paper ballots. The term includes optical scan paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, *“ballot”* also includes conventional paper ballots.

*“Ballot marking device”* means a pen, pencil, or similar writing tool, or an electronic device, all designed for use in marking an optical scan ballot, and so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

*“Certification”* means formal approval of an optical scan voting system for use in Iowa pursuant to Iowa Code sections 52.5 and 52.26.

*“De minimis change”* means a change to a certified voting system’s hardware, the nature of which will not materially alter the system’s reliability, functionality, capability, security and operation. In order for a change to qualify as a de minimis change, it must not alter the reliability, functionality, capability, security and operability of the system. A de minimis change shall also ensure that when the hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. A change shall not be considered de minimis if it has reasonable and identifiable potential to affect the system’s operation and compliance with applicable voting system standards.

*“Early voting”* means the process of receiving ballots from voters before election day without using absentee voting procedures. Iowa law does not authorize this process.

*“Electronic ballot marking device”* means a component of an optical scan voting system designed to assist voters with disabilities by displaying audio and visual ballot information to the voter, providing accessible methods for the voter to make selections, and then printing the voter’s choices on an optical scan ballot.

*“Electronic transmission”* means using hardware and software components to send data over distances both within and external to the polling place and to receive an accurate copy of the transmission.

*“Examiners”* means the board of examiners for voting systems described in Iowa Code section 52.4.

*“Modification”* means a change to a certified voting system’s software or firmware. Modification also means a change to a certified voting system’s hardware that has the potential to affect the reliability, functionality, capability, security or operability of a system.

*“Optical scan ballot”* means a printed ballot designed to be marked by a voter with a ballot marking device and to be counted by use of automatic tabulating equipment.

“*Optical scan voting system*” means a system employing paper ballots under which votes are cast by voters by marking paper ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

“*Program*” means the written record of the set of instructions defining the operations to be performed by a computer in examining, counting, tabulating, and printing votes.

“*Qualification test*” means the examination and testing of a voting system by an independent test authority using the voting system standards required by Iowa Code section 52.5 and rule 721—22.2(52) to determine whether the system complies with those standards.

“*Vendor*” means a person or representative of a person owning or being interested in an optical scan voting system and seeking certification of the equipment for use in elections in Iowa.

“*Voting booth*” means an enclosure designed to be used by a voter while marking a conventional paper ballot, optical scan ballot or ballot card.

“*Voting equipment*” means an optical scan voting system which is required by Iowa Code sections 52.5 and 52.26 to be approved for use by the examiners.

“*Voting system*” means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). “Voting system” also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

[ARC 8244B, IAB 10/21/09, effective 10/2/09; ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.2(52) Voting system standards.** All electronic voting systems approved for use by the board of examiners after April 9, 2003, shall meet Voting Systems Performance and Test Standards, as adopted by the Federal Election Commission April 30, 2002, or the 2005 Voluntary Voting Systems Guidelines, as adopted by the U.S. Election Assistance Commission in December 2005. The report of an accredited independent test authority certifying that the system is in compliance with these standards shall be submitted with the application for examination.

This rule is intended to implement Iowa Code section 52.5.

[ARC 9468B, IAB 4/20/11, effective 5/25/11; ARC 9762B, IAB 10/5/11, effective 9/8/11]

**721—22.3(52) Examiners.** The examiners annually shall elect a chairperson. All three examiners must be present for any formal action. Approval by two of the three examiners is required to approve any action to be taken by the examiners.

**22.3(1)** Notice of the time and place of any meeting by the board of examiners must be published pursuant to Iowa Code section 21.4.

**22.3(2)** Meetings of the examiners are open to the public, except that closed meetings may be held as permitted by Iowa Code section 21.5.

**22.3(3)** Correspondence and materials required to be filed with the board of examiners shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

**721—22.4(52) Fees and expenses paid to the examiners.**

**22.4(1)** The examiners shall be reimbursed for travel to and from the meeting place at the rate specified in Iowa Code section 70A.9. The examiners shall also be reimbursed for actual expenses for meals and lodging, if necessary.

*a.* If the meeting was called for the purpose of examining, reexamining, testing, or discussing the certification of voting equipment offered by a vendor, the examiners’ expenses shall be paid by the vendor within seven days following the completion of the examination and testing of the voting equipment.

b. If the meeting was called for the purpose of advising the secretary of state regarding administrative rules for the examiners, or to hear complaints or requests for decertification of voting equipment, or any other business of interest to the examiners, the expenses shall be paid by the secretary of state.

**22.4(2)** The vendor shall pay the examiners the amount of compensation specified in Iowa Code section 52.6 at the beginning of each meeting for which compensation is required to be provided to the examiners. The fee shall be paid as follows:

a. For each meeting or series of meetings held for the purpose of certifying an optical scan voting system or component thereof.

b. For each meeting or series of meetings for reconsideration of an optical scan voting system or component thereof after denial of certification.

This rule is intended to implement Iowa Code sections 17A.19, 49.25(3), 52.5, 52.6, and 52.26.  
[ARC 8244B, IAB 10/21/09, effective 10/2/09]

**721—22.5(52) Examination of voting equipment—application.** Any vendor who wishes to apply for certification of voting equipment for use in the state of Iowa shall apply to the secretary of state for an appointment with the examiners. The application shall include five copies of each of the following:

**22.5(1)** History of the equipment to be examined. This history shall include a complete description of the equipment to be examined, descriptions of any previous models of the equipment, the date the system to be examined went into production, and a complete list of jurisdictions which have used the equipment. The user list shall include jurisdictions which used the equipment experimentally without purchasing it, jurisdictions which purchased earlier versions of the equipment to be examined, and jurisdictions which purchased the current version of the equipment to be examined.

**22.5(2)** Copies of all manuals developed for use with the system including, but not limited to, technical manuals for repair and maintenance of the equipment, operations manuals for election officials, printer's manuals for ballot production, and any other written documents prepared by the vendor that describe the operation, use, and maintenance of the machine.

**22.5(3)** Report of an accredited independent test authority certifying that the system is in compliance with the voting systems standards required by rule 721—22.2(52). Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, members of the board of examiners, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports, and no copies shall be made. All independent test authority reports shall be marked "CONFIDENTIAL" and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.

**22.5(4)** Copies of the reports of any test authority who has examined the equipment in conjunction with certification requirements of other states.

**22.5(5)** Reports of the certifying authorities of any other states that have examined the equipment, whether or not the equipment was approved for use.

**22.5(6)** Brochures, photographs and advertising material used to encourage sales of the equipment.

**22.5(7)** Manuals for the use and maintenance of any components of the equipment that are not manufactured by the vendor.

**22.5(8)** Rescinded IAB 4/20/11, effective 5/25/11.

**22.5(9)** Reserved.

**22.5(10)** The form prescribed by the state commissioner of elections to request examination and testing of voting systems.

[ARC 8244B, IAB 10/21/09, effective 10/2/09; ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.6(52) Review of application by examiners.** Upon receipt of the application, the secretary of state shall immediately forward copies of the application to each of the examiners. The examiners shall review the application and within seven days a date shall be set for the examiners to meet and examine

the equipment. If additional information is needed by the examiners, they may delay setting a date for the examination pending the submission of the requested materials.

**721—22.7(52) Consultant.** If the examiners determine that a consultant is necessary to determine whether a system meets the requirements of Iowa law or whether a change to a voting system is de minimis or a modification, the examiners shall notify the vendor of the decision. The vendor may suggest the names of reliable independent test authorities to the examiners and may decline to submit the equipment to the examination of an individual for good reason.

A consultant may be employed if no other state has certified the equipment for use. The examiners may require a consultant if the equipment has been modified following certification by other states, or if the examiners believe it to be necessary.

If a test authority has been determined to be necessary by the examiners and a suitable consultant cannot be agreed upon by the examiners and the vendor, the equipment shall not be approved for use.

[ARC 8244B, IAB 10/21/09, effective 10/2/09]

**721—22.8(52) Contact other users.** The examiners shall contact a representative sample of the users of the equipment to determine the nature of the experience of other users.

**721—22.9(52) Testing the equipment.** The vendor shall provide to the examiners one, or more, if deemed necessary by the examiners, production models of the equipment submitted for certification. The equipment shall be prepared by the examiners with the aid of the vendor to be tested at two sample elections: a sample partisan primary election, and a sample general election.

**22.9(1)** Test county for absentee voting. Voting equipment which is designed to be used for tabulation of absentee ballots shall be tested using a model county consisting of 155 precincts, with 180,000 registered voters. The county shall include one U.S. congressional district, five state senate districts, 11 state house of representatives districts, and 30 townships. Each township shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

**22.9(2)** Test county for absentee systems. Voting equipment which is designed to be used for tabulation of absentee ballots only shall be tested using a model county consisting of 155 precincts, with 180,000 registered voters. The county shall include one U.S. Congressional District, five state senate districts, 11 state house of representatives districts, and 30 townships. Each township shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

**22.9(3)** Test precinct for precinct count systems. The test precinct shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

**22.9(4)** All requirements for preparation and printing of test ballots shall be met in the preparation of ballots for the test elections including, but not limited to, rotation of candidates' names and the provision of space for write-in votes.

**22.9(5)** Test ballots provided by vendor. The vendor shall provide the ballots to be used in the testing of the equipment. A total of at least 2000 ballots shall be printed for each of the two test elections. One thousand ballots for each test election shall be marked and manually tabulated by the vendor to use as a test of the ability to tabulate results accurately. The balance of the ballots shall be delivered to the examiners before the date set for the examination. The examiners shall mark and manually tabulate an additional set of at least 300 test ballots.

**721—22.10(52) Test primary election for three political parties.**

**22.10(1)** *Closed primary election.* Voters may only cast votes for the candidates of one of the parties.

**22.10(2)** *Offices.* The following offices shall each have two candidates for each party. Candidate names shall be rotated as required by Iowa Code section 43.28.

- a. U.S. Senator
- b. U.S. Representative

- c. Governor
- d. Secretary of State
- e. Auditor of State
- f. Treasurer of State
- g. Secretary of Agriculture
- h. Attorney General
- i. State Senator
- j. State Representative
- k. County Supervisor (vote for no more than three of six candidates)
- l. County Treasurer
- m. County Recorder
- n. County Attorney
- o. and p. Rescinded IAB 8/1/07, effective 7/13/07.

**22.10(3) Write-in votes.** Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office.

**721—22.11(52) Test general election.** The ballots for the test general election shall include the following:

**22.11(1) Offices.** In the test general election all of the above offices shall be included with the addition of candidates for lieutenant governor to be voted for jointly with each candidate for governor. Each political party and nonparty political organization shall have one candidate for each office that appeared on the primary ballot, except county supervisor, which shall have three candidates for each party and nonparty political organization. Names of candidates for county supervisor shall be rotated as required by Iowa Code section 49.31, subsection 2.

The following nonpartisan offices shall also be included on the ballot with the heading “Nominated by Petition”:

- a. Township Trustee
- b. Township Clerk
- c. County Public Hospital Trustee
- d. Soil and Water Conservation District Commissioners
- e. Agricultural Extension Council

**22.11(2) Judicial ballot.** Portions of the judicial ballot may be printed separately if necessary.

- a. Supreme Court (five justices)
- b. Appeals (four judges)
- c. District Court (six judges)
- d. District Associate Judges (three judges)

**22.11(3) Public measures.**

- a. Constitutional Amendments (two)
- b. Local public measures (three)

**22.11(4) Straight party voting** for three political parties and five nonparty political organizations.

**22.11(5) Write-in votes.** Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office. This does not include judges standing for retention.

**721—22.12(52) Report of findings.** The examiners shall complete a report showing their findings. The report shall include a checklist containing all statutory requirements for voting systems and shall indicate whether each requirement applies to the voting system being examined and whether the voting system is compliant or not compliant. The checklist must indicate that all applicable items are compliant with statutory requirements in order for the examiners to find that the voting system may be approved for use.

**22.12(1) Approval permits use.** If the report states that the voting system has been approved for use, the voting system may be adopted for use at elections.

**22.12(2) Report filed with the secretary of state.** The report shall be filed with the secretary of state. The secretary of state shall retain the vendor's application and other documents submitted pertaining to the certification as long as the voting system remains certified.

**721—22.13(52) Notification.** The examiners shall promptly notify the vendor of their decision and shall provide the vendor with a copy of their report.

**721—22.14(52) Denial of certification.** If the examiners find that the equipment does not meet the requirements prescribed by the Code of Iowa and the Iowa Administrative Code, the examiners shall deny certification to the equipment. The report of the board shall specify the reasons for the denial, as well as all areas in which the equipment complied with the requirements of the law. Certification may be denied for any of the following reasons:

**22.14(1)** The absence of any feature required by Iowa Code section 52.5 or 52.26.

**22.14(2)** Failure to pay the examiners' fees and expenses, or the fees of any consultant mutually agreed upon by the examiners and the vendor.

**22.14(3)** Failure to provide the examiners with a complete application as required by rule 721—22.5(52).

**22.14(4)** Failure of the equipment to produce accurate results in one or both of the test elections. The test groups of ballots shall be tabulated manually to determine the expected outcome of each test election. If the equipment fails to reproduce exactly the results of the manual tabulation, the system shall not be approved for use, unless it can be demonstrated that the manual tabulation was in error and the machine tabulation was accurate.

[ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.15(52) Application for reconsideration.** Following denial of certification a vendor may make the necessary modifications to the system and apply for reconsideration. Aspects of the equipment which were approved in the initial application do not need to be reexamined unless the examiners find that the modifications may have affected the ability of the equipment to comply in other areas. If certification was denied for the reasons cited in 22.14(1) or 22.14(4), both test elections must be completed satisfactorily, or approval shall not be granted.

**721—22.16(52) Appeal.** If the vendor believes the denial of certification is in error, the vendor must file written exceptions with the examiners within 30 days after issuance of the report. The examiners will issue a response to the exceptions within 30 days after filing of the exceptions. A vendor who is aggrieved or adversely affected by a denial after a ruling on exceptions may seek judicial review pursuant to Iowa Code section 17A.19.

**721—22.17(52) Changes to certified voting systems.** The procedures in this rule shall be followed anytime a change is made to a certified voting system, including a change in tabulation software, firmware, or hardware.

**22.17(1) Notification of change.** The vendor shall notify the examiners of any changes in a certified voting system. The vendor shall provide the examiners with the following information at the time the vendor provides notice of the change(s):

*a.* A description of the changes made.

*b.* Reports of test results conducted by an accredited independent test authority, and any reports of test results conducted by or for other states following the changes to the voting system.

*c.* Copies of manuals, instructions, advertisements and other documents submitted with the voting system's original application for certification that have been updated since the original application was submitted.

*d.* An assessment from an accredited independent test authority of the change as either a de minimis change or a modification to the voting system.

**22.17(2) Commencing review proceedings.** Within seven days of receiving a voting system change notice from a vendor, the examiners shall commence review proceedings to independently determine

whether the change submitted by the vendor is a de minimis change or a modification to the voting system. In making this independent determination, the examiners may use any means available, including hiring a consultant pursuant to rule 721—22.7(52).

**22.17(3) *De minimis changes.*** If the examiners determine a change to a voting system is de minimis, the examiners may approve the changes by motion and certify the changed voting system for use in the state.

**22.17(4) *Modifications to voting systems.*** If the examiners determine a change to a voting system is a modification to the voting system, the examiners shall require the vendor to submit a new application for certification and testing of the voting system pursuant to rules 721—22.5(52) to 721—22.11(52).  
[ARC 8244B, IAB 10/21/09, effective 10/2/09]

**721—22.18(52) Rescinding certification.**

**22.18(1) *Grounds for rescinding certification.*** Certification may be rescinded if it is found that:

- a. The equipment does not produce accurate results and reports as required for an election.
- b. Modifications have been made in a certified voting system that have not been approved by the examiners.
- c. Equipment which has been certified for use has not been adopted by any county in Iowa, or is no longer used by any county in Iowa, and is no longer available for purchase from the manufacturer. The examiners may rescind certification of such voting equipment without a complaint or contested case proceedings.
- d. Equipment that has been certified for use no longer complies with the requirements of Iowa law.
- e. Any other grounds that may materially affect delivery or performance of the equipment.

**22.18(2) *Procedure for rescinding certification.*** Complaints regarding voting equipment certified for use in Iowa shall be filed with the secretary of state. The examiners shall review all complaints and may initiate a contested case to rescind certification on any ground listed above. The contested case may be conducted before the examiners or before an administrative law judge. A contested case for rescinding certification shall be conducted, to the extent applicable, in accordance with the procedural rules specified in 481—Chapter 10, Iowa Administrative Code.

**22.18(3) *Suspension of certification.*** If the administrative law judge hearing the contested case, or the examiners, as the case may be, find that the voting equipment can be modified to correct the deficiency, certification may be suspended until the deficiency is corrected. If it is found that the deficiency is limited to a specific flaw not present in all models of the equipment, the suspension may be limited to the deficient models. While certification is suspended, the equipment may not be used for any election.

After the required modifications have been made the vendor may apply for reexamination of the equipment following the procedure described in rule 721—22.17(52).

**22.18(4) *Further use prohibited.*** If certification of voting equipment is rescinded without qualification, no further use shall be permitted by any county.  
[ARC 8244B, IAB 10/21/09, effective 10/2/09]

These rules are intended to implement Iowa Code sections 17A.12, 21.4, 21.5, 52.4, 52.5, 52.6, 52.7, 52.26, and 70A.9.

**721—22.19(52) Examination of voting booths—application.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.20(52) Review of application by examiners.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.21(52) Contact other users.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.22(52) Criteria for approval.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.23(52) Report.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.24(52) Notification.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.25(52) Denial of certification.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.26(52) Application for reconsideration.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.27(52) Appeal.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.28(52) Reexamination following changes in voting booth.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.29(52) Rescinding certification.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.30(50,52) Electronic transmission of election results.**

**22.30(1) Certification of equipment.** On or after December 17, 2003, new components for transmission of election results by any electronic means may be used in elections in Iowa only if the components are approved by the board of examiners for use with a certified voting system. Existing systems containing electronic transmission components in use before December 17, 2003, may continue to be used until January 1, 2006, when the Help America Vote Act voting system requirements become effective.

The examiners shall review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards and the examiners concur, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report or the examiners conclude that the electronic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

**22.30(2) Procedures on election day.** The election results may be transmitted electronically from voting equipment to the county commissioner of elections' office only after the precinct election officials have produced a written report of the election results as required by Iowa Code section 50.11. All election officials of the precinct shall sign the printed report of the election results. The signed copy shall be the official tabulation from that precinct.

**22.30(3) Procedures after election day.** Before the canvass by the board of supervisors, the county commissioner of elections shall compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code section 50.11 shall be considered the correct results.

This rule is intended to implement Iowa Code sections 50.11 and 52.41.

**721—22.31(52) Acceptance testing.** When the commissioner receives voting equipment from a vendor, the commissioner shall carefully examine and test the equipment to:

**22.31(1)** Verify that the system delivered is certified for use in Iowa. The commissioner shall compare the voting system version numbers with the list of certified voting equipment provided by the state commissioner;

**22.31(2)** Verify that everything in the contract has been delivered by:

- a. Comparing a copy of the purchase contract with the items received;
- b. Making certain that all components, such as power cords, casters, and keys, are included;
- c. Reviewing instruction and maintenance manuals to be sure that the correct version of each manual was provided; and

**22.31(3)** Verify that everything delivered actually works. The commissioner shall run a simulated election to confirm that each part of the system and the system as a whole function properly.

**721—22.32(52) Optical scan voting system purchase program.** Rescinded IAB 4/20/11, effective 5/25/11.

**721—22.33 to 22.38** Reserved.

**721—22.39(52) Public testing for direct recording electronic voting machines.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.40(52) Public testing of lever voting machines.** Rescinded IAB 8/1/07, effective 7/13/07.

**721—22.41(52) Public testing of optical scan systems.** All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35. The process and results of the test shall be documented and available for inspection.

**22.41(1)** Each automatic tabulating device (including equipment that will be used for counting absentee ballots) shall be tested to determine the following:

*a.* The device and its programs will accurately tabulate votes for each candidate and question on the ballot.

*b.* Votes cast for more candidates for any office than the number to be elected will result in the rejection of all votes cast for that office on that ballot. Votes properly cast for other offices on the same ballot shall be counted.

*c.* The tabulating equipment records all votes cast and no others. A written tally of the test votes shall be prepared before the test. The results of the test voting shall be recorded. The results of the machine tabulation shall be printed and compared with the test plan.

*d.* The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled, and the write-in votes are tallied correctly.

*e.* For primary elections, the tabulating equipment accurately records votes cast for all political parties.

*f.* For general elections:

(1) A ballot marked with only a straight party vote is recorded with one vote for each candidate of the designated political party, and no other votes are recorded for partisan offices;

(2) The voter may override a straight party vote for any office by voting for any candidate not associated with that political party; and

(3) For offices to which more than one person will be elected, if a voter has chosen to override a straight party vote, only the candidates whose names are marked shall receive a vote.

**22.41(2)** Conducting the test.

*a.* The commissioner shall follow the process described in rule 721—22.42(52) for preparing test decks.

*b.* If, during the test, there are differences between the test plan and the results produced by the optical scan device, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the faulty program or equipment shall not be used in the election.

*c.* The test decks, the preparer's tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

**721—22.42(52) Preparing test decks.** The commissioner shall prepare test decks from all ballots printed for use in the election, including those for use at the polling places and for absentee balloting. Each of the following test decks shall be prepared for every precinct and ballot style in the election. Commissioners may use additional test methods to supplement the process described in this rule.

**22.42(1)** *Requirements for all test decks prepared by the commissioner and used in public testing.* The commissioner shall:

*a.* Replace ballots spoiled during the marking process instead of attempting to correct errors.

*b.* Fill in each oval completely using the recommended pen, pencil or AutoMARK VAT.

*c.* Mark each ballot "Test Ballot."

*d.* Mark at least one valid vote for each candidate and question on the ballot using the OVI unit (if applicable). The ballots marked by the OVI unit may be used as part of the systematic or straight party test deck (if applicable).

**22.42(2) Required test method.** The commissioner shall:

*a.* Prepare a test plan showing the planned number of votes, including undervotes and overvotes for each oval on the ballot. Follow the instructions in subrules 22.42(3) through 22.42(5) in preparing the test decks.

*b.* Mark the test ballots according to the test plan.

*c.* Print a zero totals report from the optical scan tabulator before inserting any ballots.

*d.* Insert the ballots into the optical scan tabulator and print a report showing the number of votes recorded for all offices, questions and judges, including undervotes and overvotes.

*e.* Compare the printed report with the test plan to ensure that the correct number of votes was counted for each oval.

*f.* If the commissioner finds errors, the commissioner shall identify and correct them. The commissioner shall repeat the testing process until the printed results from the tabulator match the test plan. If the commissioner cannot produce an errorless test, the equipment shall not be used in the election.

**22.42(3) Systematic test deck.** The commissioner shall determine a unique number of votes for each candidate in each office, such as one vote for each write-in oval for the office, two votes for the first candidate listed (or “NO” votes on public measures and judges), three votes for the second candidate, etc. It is not necessary to have a different number of votes for each write-in oval for offices for which the voter may select more than one candidate. However, the write-in oval shall have a different number of votes marked than any candidate for the office. The commissioner shall:

*a.* On general election ballots, leave the straight party choice blank.

*b.* For offices without candidates, mark all of the write-in ovals for that office.

*c.* For offices in which the voter may vote for more than one candidate, vote for the maximum allowed on at least one ballot.

*d.* On a ballot that contains at least one valid vote, overvote one other office or question.

**22.42(4) System-specific testing requirements.** Separate tests are prescribed for each certified voting system.

*a. Election Systems & Software and Unisyn OpenElect—overvote and blank ballot test.* For an overvote and blank ballot test, the commissioner shall:

(1) Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

(2) If the test is for ballots that will be used in a general election, mark two straight party votes on one ballot. Do not mark any other ovals. In the test plan, this ballot should be tallied to show that the straight party selection was overvoted, and to show undervotes for all other offices and questions on the ballot.

(3) When the overvoted ballots are rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. Add to the manual tally the number of overvotes in this test. The tally for this part of the test deck will show no votes for any candidate.

(4) Insert a blank ballot. When the blank ballot is rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. This is a very important test of the accuracy of ballot printing. Printing errors sometimes put readable marks in the voting target area.

(5) Orientation test. Mark the maximum number of choices for each office and question on one ballot.

Scan this ballot in each of the four possible orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

- b. Premier Election Solutions.*
- (1) Blank and fully voted test. The commissioner shall use two ballots for this test.
    1. Leave one ballot completely blank.
    2. On the second ballot, mark every oval on both sides of the ballot.
    3. Select “Test Blank Ballots” and insert the blank ballot in all four orientations:
      - Face up, head first.
      - Face down, head first.
      - Face up, feet first.
      - Face down, feet first.
    4. Select “Test Fully Voted Ballots” and insert the second ballot in each of the four orientations listed in numbered paragraph “3” above.
    5. Reinsert the blank ballot and the fully voted ballot and override the rejection feature.
  - (2) Overvote. Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates’ names on the ballot.
 

**22.42(5) *Straight party test for general elections.*** For a straight party test, the commissioner shall:

    - a.* For each set of ballots:
      - (1) Mark straight party votes in a pattern, such as one vote for the first straight party choice, two votes for the second, and so on, and tally the expected results. Do not mark anything else on this group of ballots.
      - (2) On a second set of ballots containing as many ballots as there are straight party choices, mark the straight party option and, for each office affected by the straight party vote, mark the write-in oval, and tally the expected results.
      - (3) If the election includes an at-large county supervisor race with more than one person to be elected, mark a ballot with only a straight party vote and then vote for one candidate from the same political party as the straight party vote. Only this separately marked candidate should receive a vote.
    - b.* Compile the results of the straight party test deck.

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.43(52) Conducting the public test.**

**22.43(1)** The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

- a.* The correct program cartridge or memory card is in place for the election and the precinct or precincts in which it will be used.
- b.* All counters are set at zero before the test is begun.

**22.43(2)** The commissioner shall conclude the test not later than 12 hours before the polls open on election day. Following the test, the tabulating equipment shall be inspected to determine that:

- a.* All counters have been returned to zero.
- b.* All required locks or seals are in place.
- c.* The automatic tabulating equipment is ready for operation at the election.

The results tape from each scanner produced during the public test shall be signed by the person conducting the test and by any observers present at the test. The signers shall write their signatures at the end of the tape where it will be detached from the machine. The tape shall be torn or cut across the signatures, so that a portion of the signature is on the tape remaining on the tabulating device. The test results tape, including a part of the tester’s signature, shall be retained with the appropriate test deck for the period of time required by Iowa Code section 50.19.

**22.43(3)** Test deck submitted by observers. Any person who is present at the public test may mark ballots to be used to test the voting equipment. The following conditions apply:

- a.* Not more than ten ballots may be submitted by any person.
- b.* Only official ballots provided by the commissioner at the test shall be used.
- c.* The observer submitting the test shall provide a written tally of the test deck.

d. The results of the machine tabulation shall be printed and compared with the observer's tally. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election.

e. The test decks, the tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

Rules 721—22.41(52) through 721—22.43(52) are intended to implement Iowa Code section 52.35.

**721—22.44 to 22.49** Reserved.

**721—22.50(52) Voting system security.** Each county shall have a written security policy. The policy shall include detailed plans to protect the election equipment and data from unauthorized access. The policy shall describe the methods to be used to preserve the integrity of the election and to document the election process.

**22.50(1) Staff access.** The security policy shall describe who shall have access to the voting equipment.

**22.50(2) Computers.** For security purposes, computers used in the commissioner's office to prepare ballots and voting equipment programs or to compile and report election results should not be used for any other function and should not be linked to any computer network or to the Internet.

a. If the election computers are linked to a network or to the Internet, the commissioner shall use a firewall to filter network traffic. Data transmissions over the Internet shall be encrypted and password-protected. Information posted to a Web site shall not be considered transmission of data over the Internet.

b. Access shall be limited to persons specified by the commissioner in the written security policy. The level of access shall be included in a written security policy.

(1) Uniqueness. Every ID and password shall be unique. The creation of generic or shared user IDs is specifically prohibited. Each user shall have exactly one user ID and password, except where job requirements necessitate the creation of multiple IDs to access different business functions.

(2) Authority. Each user shall be granted only the level of access specifically required by the user's job. Use of "Administrator," "Super User," "Security Administrator," or "SA" levels of authority shall be severely restricted.

(3) Generic user IDs. Staff members with generic user IDs are not allowed to sign on to voting systems.

(4) Password standards.

Account Policy	Recommended Setting
Maximum Password Age	90 days
Minimum Password Age	2 days
Minimum Password Length	8 characters
Enforced Password History	6 passwords (last 6 cannot be used)
Account Lockout (number of unsuccessful log-on attempts)	3 bad attempts
Account Lockout Duration	6 hours
Reset Account Lockout Counter After	6 hours

**22.50(3) Evacuation.** If it is necessary to evacuate the election office, a satellite absentee voting station or a polling place, the precinct election staff or the election officials shall immediately attempt to notify the commissioner and take the following actions:

a. Keep people safe.

b. If possible, gather and secure voted ballots, election equipment and critical election documents.

**721—22.51(52) Memory cards.** A memory card is a small, removable device containing data files of the election definition programmed for use in voting equipment for each election. For all voting equipment, the following security measures are required:

**22.51(1) *Serial number.*** Each memory card shall have a serial number printed on a readily visible label. The label shall include the name of the county.

**22.51(2) *Inventory.*** Memory cards owned by the county and retained in the custody of the county commissioner shall be maintained under perpetual inventory, with a record of inventory activity. The commissioner shall maintain a similar record of relevant actions if the memory cards are acquired from a vendor for each election. The record of inventory activity shall reflect:

- a.* The date each memory card was acquired;
- b.* Each use of each memory card in an election;
- c.* Each maintenance activity to a memory card, such as changing the battery;
- d.* Any problems or errors detected while using the memory card during its life;
- e.* Records of the disposal of any memory cards at the end of their useful life or upon return to the vendor for maintenance or warranty claims.

**22.51(3) *Custody.***

*a.* In counties where the commissioner has the necessary software and equipment to program the memory cards locally, the commissioner shall maintain a memory card log for each election as required in subrule 22.51(4) during the period when the memory cards are removed from storage, prepared for an election, and until they are sealed into a voting device. Only county employees and precinct election officials, as applicable, authorized by the county's security policy shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time. If a person who is not authorized by the security policy to have access to the memory cards transports them to another location, such as a warehouse, the memory cards shall be enclosed in a transport container with a tamper-evident seal.

*b.* In counties where the commissioner purchases programming services from a vendor, the memory cards shall be shipped to and from the vendor by a shipping service that employs tracking numbers. The memory cards shall be enclosed in a package sealed with a numbered, tamper-evident seal. Programmed memory cards shall be shipped in a package sealed with a numbered, tamper-evident seal from the vendor to the commissioner. If the seal is not intact upon arrival, the commissioner shall immediately contact the vendor for replacement cards. Only county employees authorized by the county's security policy (and precinct election officials, as applicable) shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time.

**22.51(4) *Memory card log.*** For each election, the commissioner shall create a log to record the serial numbers of each memory card, the voting device into which the memory card was installed, the serial number of the seal, the ballot style and the precinct to which the machine is assigned. The log shall be in substantially the same form as Form A or Form B, as applicable:





**Instructions to vendor:**

Check in each card number on the enclosed chain of custody record when unpacking cards.

By: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_:\_\_\_ a.m./p.m.  
Print name Signature

- If memory cards are removed from this inventory for any reason, make a notation of which card(s) on the Memory Card Record.
- Replacement card(s) if issued should be added to the bottom of the Memory Card Record as a new card. A serial number will be assigned later by the receiving county.

Shipped via: \_\_\_\_\_ Date: \_\_\_\_\_ Tracking number: \_\_\_\_\_

**Received by County Election Department** on Date: \_\_\_/\_\_\_/\_\_\_

Was the package sealed? \_\_\_\_\_ Was the seal intact? \_\_\_\_\_ Notes: \_\_\_\_\_

Keep the memory cards in secure storage after they are received and until they are installed in the voting equipment.

**22.51(5) Preparation and installation.** When memory cards are installed, they shall be sealed immediately into the machine using a numbered, tamper-evident seal. Appropriate log entries shall be completed.

**22.51(6) Replacing seals or memory cards.** If a seal is accidentally broken or a memory card is replaced for any reason, the issuance of a new seal and the entry into the log shall be witnessed by more than one person. The facts of the incident and the names of the individuals who detected and resolved it shall be recorded.

**22.51(7) Opening the polls.** Immediately before the polls open on election day, the precinct election officials shall turn on the voting equipment and print the report showing that all counters are set at zero.

**22.51(8) Verification log.** The commissioner shall provide to each precinct a precinct verification log with the ballot record and receipt. The verification log shall provide places for precinct election officials to record or check the following information before the polls open and again before leaving the polling place at the end of the day:

- Seal numbers from the voting equipment; and
- Condition of seals on ballot containers.

**22.51(9) Election day.**

*a.* Before the polls are opened, the precinct election officials shall verify the required information in the verification log and sign the log.

*b.* After the polls are closed, the precinct election officials shall verify the required information in the verification log and sign the log before leaving the polling place.

*c.* If the precinct election officials remove the memory cards from the voting equipment, the officials shall first print the results report from the voting equipment.

**22.51(10) Return of memory cards.** If the precinct election officials remove the memory cards from the voting equipment on election night, they shall return to the commissioner the memory cards and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

## Memory Cards

Election Date: \_\_\_\_\_

Precinct: \_\_\_\_\_

This envelope contains Memory Cards and memory card access seals from this precinct.

Machine Number	Memory Card #	Memory Card Seal #

[Signatures of all precinct election officials shall be included on the label.]

**22.51(11) Storage.** If the memory cards are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). When the memory cards are removed, their serial numbers shall also be verified against the verification log returned by the precinct's election officials. The memory card audit log shall be retained for the time period required by Iowa Code section 50.19.

**22.51(12) Results verified.** Before the conclusion of the canvass of votes, the individual results reports from the precincts, as signed by the precinct election officials at the polls on election night, shall be compared to the election results compiled for the canvass (either manually or electronically) to verify that transmitted and accumulated totals match the results witnessed by the election officials. Any discrepancies in these totals shall be reconciled before the supervisors conclude the canvass.

**22.51(13) Retention of programmed memory cards.** The election information on all memory cards used for an election shall be retained on the memory cards until after the time to file requests for recounts and election contests has passed. If a contest is pending, the memory cards shall be retained until the contest is resolved. Before the memory cards are permanently erased, the commissioner shall print the memory card audit log from each card.

**22.51(14) Retention of program information.** The commissioner shall retain all instructions and other written records of the process for programming the memory cards and the memory card audit logs for the period required by Iowa Code section 50.19. The contents of memory cards and other electronic records of the election process shall be collected and retained in an electronic or other medium and stored with the other election records for the time period required by Iowa Code section 50.19.

**721—22.52(52) Voting equipment malfunction at the polls.** The precinct election officials shall immediately cease using any malfunctioning voting equipment and report the problem to the commissioner. Only a person who is authorized in writing by the commissioner to do so shall be permitted to attempt to repair malfunctioning voting equipment. The person shall show identification to the precinct election official. The commissioner shall keep a written record of all known malfunctions and their resolution. The precinct election officials shall return the voting equipment to service only if the malfunction is corrected.

**22.52(1) Routine resolution.** Some problems may be easily resolved by following simple instructions. If the commissioner and the precinct election officials are able to resolve a problem without replacing the equipment, the officials shall document the problem, the time it occurred, how it was resolved, and by whom.

**22.52(2) Repair or replacement.** Repairs to voting equipment at the polls on election day shall be limited. If the problem cannot be easily resolved, a person who is authorized to do so by the commissioner shall replace the equipment as soon as possible. Two election officials, one from each political party, shall witness repair or replacement of any voting equipment, including memory cards. The authorized person making the repair or replacement and the two election officials shall sign a report of the incident.

721—22.53 to 22.99 Reserved.

OPTICAL SCAN VOTING SYSTEMS

**721—22.100(52) Optical scan ballots, automatic tabulating equipment, and absentee voting.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.101(52) Definitions.** The definitions established by this rule shall apply whenever the terms defined appear in relation to an optical scan system used with the type of ballot defined in this rule.

“*Ballot*” means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more optical scan ballots.

“*Optical scan voting system*” means a system employing optical scan ballots under which votes are cast by voters by marking the optical scan ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

“*Overvote*” means to vote for more than the permitted number of choices for any office or question on a ballot.

“*Secrecy envelope*” means a reusable envelope of sufficient construction that when the optical scan ballot is inserted in it all portions indicating voting marks are hidden from view.

“*Tabulating device*” means the portable apparatus which examines and counts the votes recorded on the optical scan ballot and produces a paper printout of the results of the voting.

“*Ticket*” means each list of candidates nominated by a political party or group of petitioners.

“*Undervote*” means to vote for fewer than the permitted number of choices for any office or question on a ballot.

“*Voting system*” means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). “Voting system” also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

“*Voting target*” means the space on an optical scan ballot which the voter marks to cast a vote for a candidate, judge or question. This target shall be printed according to the requirements of the voting system to be used to read the ballots.

**721—22.102(52) Optical scan ballots.** The optical scan ballots shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

**22.102(1)** The optical scan ballots may be printed on both sides of a sheet of paper. If both sides are used, the words “Turn the ballot over” shall be clearly printed on the front and the back of the optical scan ballot, at the bottom.

**22.102(2)** Printed at the top of the front side of the optical scan ballot shall be the name and date of the election; the words “Official Ballot”; a designation of the ballot style or precinct, if any; and a facsimile of the commissioner’s signature.

**22.102(3)** The voting target shall be printed opposite each candidate’s name and write-in line on the optical scan ballot, and opposite the “yes” and “no” for each public measure and judge. The voting target shall be printed on the left side of the name or “yes” and “no”. The voting target shall be an oval unless the voting system requires a target with a different shape.

**22.102(4)** For partisan primary elections, the names of candidates representing each political party shall be printed on separate optical scan ballots. The ballots shall be uniform in quality, texture and size. The name of the political party shall be printed in at least 24-point type (¼” high) at the top of the ballot.

**22.102(5)** There shall be printed on the ballot a line to accommodate the initials of the precinct election official who endorses the ballot as provided in Iowa Code sections 43.36 and 49.82.

**22.102(6)** It is not necessary for public measures to be printed on colored paper.

**22.102(7)** Ballots shall be coded as necessary to allow the tabulation program to identify the appropriate ballots for the precinct. Ballots shall be coded so the tabulating device can identify by precinct the votes cast for each office and question on the ballot by precinct. The votes from the absentee and special voters precinct shall be reported as a single precinct except in general elections pursuant to Iowa Code section 53.20 as amended by 2008 Iowa Acts, House File 2367. Identical ballots shall not be coded to identify groups of voters within a precinct.

**22.102(8)** No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. If the full text of a public measure will not fit on a single column of the ballot, the commissioner shall prepare a summary for the ballot and post the full text in the voting booth as required by Iowa Code section 52.25.

**22.102(9)** Ballots shall be stored in a locked room or storage area. Access to the storage area shall be restricted to those persons identified in the election security plan. Throughout the election process, the commissioner shall keep accurate records of the number of each type of ballot or ballot style printed for the election. This record shall include the number of ballots:

- a. Ordered from the printer.
- b. Printed and delivered by the printer to the commissioner. The commissioner may store sealed, unopened packages of ballots without verifying the number of ballots in the package.
- c. Used for testing as required by Iowa Code sections 52.9 and 52.35 and rule 721—22.41(52).
- d. Held in reserve for emergencies as required by Iowa Code section 49.66.
- e. Delivered to and returned from the polling places as required by Iowa Code sections 49.65 and 50.10.
- f. Used for absentee voting, including any spoiled ballots.
- g. Issued as sample ballots to the public as permitted by Iowa Code section 43.30.
- h. Photocopied ballots used pursuant to Iowa Code section 49.67.
- i. Printed by the commissioner using any voting system program, such as Election Systems & Software's Ballot on Demand program.

**721—22.103 to 22.199** Reserved.

#### PRECINCT COUNT SYSTEMS

##### **721—22.200(52) Security.**

**22.200(1)** At least one tabulating device shall be provided at each precinct polling place for an election. If the tabulating device is delivered to the polling place before election day, it shall be secured against tampering or kept in a locked room.

**22.200(2)** The maintenance key or keys used to gain access to the internal parts of the tabulating device shall be kept in a secure place and in a secure manner, in the custody of the commissioner. On election day, the key used to obtain the paper printout shall be kept by the chairperson of the precinct election officials in a secure manner. Small electronic devices, such as memory cards, cartridges or other data storage devices used to activate tabulation equipment or to store election information, shall be in the custody of the precinct chairperson when the devices are not installed on the voting equipment.

**22.200(3)** If a password is needed for precinct election officials to have routine access to the tabulating device during election day, the password shall be changed for every election. The commissioner shall restrict access to the password in the written security policy.

##### **721—22.201(52) Programming and testing the tabulating devices for precinct count systems.**

**22.201(1)** All programming of tabulating devices shall be performed under the supervision of the commissioner. The devices shall be programmed to ensure that all votes will be counted in accordance with the laws of Iowa. Tabulating devices shall be programmed to return to the voter any ballots:

- a. That are not coded to be used in the precinct.
  - b. That are read as blank.
  - c. That have one or more overvoted offices or public measures.
- 22.201(2)** Rescinded IAB 10/25/06, effective 10/4/06.

**721—22.202(50) Unique race and candidate ID numbers for election night results reporting.** All tabulating devices programmed for primary and general elections and for special elections conducted pursuant to Iowa Code section 69.14 shall be programmed using the unique race and candidate ID numbers assigned by the state commissioner. The unique race and candidate ID numbers will be provided to the county commissioners with the candidate certification prepared by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.  
[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—22.203(50) Reporting election night results electronically.** For all primary and general elections, the county commissioner shall provide the state commissioner with an electronic results file generated from the county's vote tabulation software system, if any. For special elections conducted pursuant to Iowa Code section 69.14, the county commissioner shall provide election night results in the manner requested by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.  
[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—22.204 to 22.220** Reserved.

**721—22.221(52) Sample ballots and instructions to voters.** Sample special paper ballots and printed instructions for casting votes on special paper ballots shall be prominently displayed in each polling place. Instructions shall also be displayed inside each voting booth. Each special paper ballot shall also include an example of the method of marking the ballot recommended by the manufacturer of the tabulating device. Further instructions shall be provided to any voter who requests assistance in accordance with Iowa Code section 49.90.

**721—22.222 to 22.230** Reserved.

**721—22.231(52) Emergency ballot box or bin.** Each precinct shall be furnished with an emergency ballot box or bin that is suitably equipped with a lock and key or numbered, tamperproof seal. In the event of power failure or malfunction of the tabulating device, voted ballots shall be deposited in the locked or sealed emergency ballot box or bin. A precinct election official shall put the ballot into the emergency ballot box or bin for the voter. The voted ballots so deposited may be removed from the locked emergency ballot box or bin and tabulated before the polls close whenever a properly functioning tabulating device becomes available, or the voted ballots so deposited may be removed and counted electronically or manually immediately after the polls are closed. If the ballots are counted manually, the precinct election officials shall follow the requirements of 721—Chapter 26.

**721—22.232(52) Manner of voting.** After the precinct election official has endorsed a ballot, the official shall instruct the voter to use only the marker provided. The ballot shall be inserted in a secrecy folder and given to the person who is entitled to receive the ballot in accordance with the provisions of Iowa Code section 49.77.

**22.232(1)** The precinct officials shall provide each voter with a secrecy folder. The commissioner may print basic ballot marking instructions on the secrecy folder. It is not necessary to print information on secrecy folders that will limit the usefulness of the secrecy folder to one or more elections or election types. Upon receipt of the ballot in the secrecy folder, the voter shall retire alone to a voting booth and without delay mark the ballot.

**22.232(2)** The voter shall vote upon the ballot by marking the appropriate voting target with an appropriate pen or pencil in the manner described in the instructions printed on the ballot.

When a write-in vote has been cast, the ballot must also be marked in the corresponding voting target in order to be counted.

**22.232(3)** After marking the ballot, the voter shall replace it in the secrecy folder and leave the voting booth at once.

**22.232(4)** The voter shall at once deposit the ballot, still enclosed in the secrecy folder, in the tabulating device so that the ballot is automatically removed from the secrecy folder, the votes tabulated, and the ballot deposited in the ballot box.

**22.232(5)** If the tabulating device is equipped with a mechanism that will not permit more than one ballot to be inserted at one time, the voter may insert the ballot into the tabulating device. If the tabulating device cannot detect and reject multiple ballots, the voter shall be required to hand the ballot in the secrecy folder to the precinct election official without revealing any of the marks on the ballot. The precinct election official shall at once deposit the ballot in the manner described in subrule 22.232(4).

**22.232(6)** If the tabulating device returns a ballot, the precinct official attending the device shall ask the voter to wait. Without examining the ballot, the official shall enclose the returned ballot in a secrecy folder. If necessary, the official shall read to the voter the information provided by the device about the reason the ballot was returned. The official shall offer the voter the opportunity to correct the ballot. The precinct official shall mark the returned ballot “spoiled” and shall also tear or mark the ballot so that the tabulating device cannot count it. The voter may use the spoiled ballot as a guide for marking the corrected ballot. After the voter has marked the corrected ballot, the precinct officials shall collect the spoiled ballot and keep it with other spoiled ballots.

**22.232(7)** If the voter who cast the returned ballot is not available, or declines to correct the ballot, the precinct official shall not mark the ballot “spoiled.” Either the voter or the official shall reset the tabulating device to accept the ballot. The voter, or the official if the voter has gone, shall insert the ballot into the precinct counter without further examination.

**721—22.233 to 22.239** Reserved.

**721—22.240(52) Results.** After the polls are closed and the tabulating device has processed all of the ballots, including any ballots from the emergency ballot box or bin, the precinct election officials shall:

**22.240(1)** Unlock the tabulating device and obtain a paper printout showing the votes cast for each candidate and public measure.

**22.240(2)** Fasten the paper printout to the official tally sheet.

**22.240(3)** Unlock or remove the seal on the ballot box or bin containing ballots with write-in votes and open it. The precinct officials shall remove the ballots and manually count the write-in votes as required by 721—Chapter 26. The officials shall record the write-in votes in the tally list. A single tally list is sufficient for use when tabulating write-in votes.

**22.240(4)** Seal all ballots in a transfer case to be returned to the commissioner in accordance with Iowa Code section 50.12.

**22.240(5)** It is not necessary for the precinct officials to separate primary election ballots by political party.

**721—22.241(52) Electronic transmission of election results.** If the equipment includes a modem for the electronic transmission of election results, the precinct officials may transmit the results after a printed copy has been made. If the voting system includes a data card, cartridge or other small device that contains an electronic copy of the election results, the precinct chairperson shall secure the device and ensure its safe delivery to the commissioner.

**721—22.242 to 22.249** Reserved.

**721—22.250(52) Absentee voting instructions.** Printed instructions shall be included with the ballot or ballots given to or mailed to each absentee voter. Written instructions to the voter shall be sent with every absentee ballot. For federal elections, the commissioner shall use only the instructions provided by the state commissioner.

**721—22.251(52) Absentee voting instructions.** Rescinded IAB 11/23/05, effective 12/28/05.

**721—22.252 to 22.259** Reserved.

**721—22.260(52) Specific precinct count systems.** Additional rules are provided for each voting system approved for use in Iowa. The requirements in rules 721—22.261(52) through 721—22.265(52) apply only to the voting systems indicated and are in addition to the general provisions set forth in rules 721—22.200(52) through 721—22.250(52).

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.261(52) Election Systems & Software Model 100—preparation and use in elections.**

**22.261(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

*a.* Passwords used at the polling places on election day shall be changed for each election.

*b.* The control key for the Model 100 shall be in the possession of the precinct chairperson during election day.

**22.261(2) Configuration choices.** The following selections are mandatory for all elections:

*a. Maximum number of votes.* The following description for each office shall be used: “Vote for no more than xx.” Do not include “vote for” language for public measures or judges.

*b. Ballot control.* In an official election, the commissioner shall never program the Model 100 for unconditional acceptance of all ballots; shall not divert blank ballots to the write-in bin; and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

(1) Overvoted ballot.

(2) Blank ballot.

(3) Unreadable ballot.

*c. Unit control.* The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

*d. Reports.* The following are required reports:

(1) Opening the polls. Print the Zero Certification report.

(2) Closing the polls. Print the poll report before transmitting the election results by modem. The poll report is the official record of the votes cast in the precinct on election day.

(3) Certification text to appear at the end of the poll report:

We, the undersigned Precinct Election Officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the M100 Optical Scan tabulation device at this election.

[print lines for each of the officials to sign]

Precinct Election Officials                      Date: \_\_\_\_\_ Time: \_\_\_\_\_

*e. Reopen polls.* The commissioner shall enable this option, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

**22.261(3) Ballot printing.**

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the “yes” and “no” choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

*b. Instructions for voters.* The following instructions shall be printed on ballots:

(1) Voting mark. To vote, fill in the oval next to your choice.



(2) Straight party voting. To vote for all candidates from a single party, fill in the oval in front of the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges or questions.

(3) Public measures.

Notice to voters. To vote to approve any question on this ballot, fill in the oval in front of the word “Yes”. To vote against a question, fill in the oval in front of the word “No”.

**22.261(4) System error messages.** Precinct election officials shall be provided with the following list of system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner’s designee for all other messages.

**Overvoted ballot returned.** Ask voter to reinsert ballot. If the ballot is returned again, do not look at the voter’s ballot. Put it in a secrecy folder. Tell the voter that for one or more offices the scanner read more votes than the maximum number of votes allowed. To correct the error, the voter must mark a new ballot and may copy votes from the original ballot. Only if the voter agrees to mark a new ballot, write “spoiled” on the original ballot and tear off one corner to prevent it from being accepted by the scanner. Advise the voter to return to the booth and mark the new ballot. Be sure to collect the spoiled ballot before the voter leaves.

**Overvoted ballot accepted.** This message will appear when the scanner accepts an overvoted ballot.

**Unidentified mark—check your ballot.** One or more marks on the ballot are not dark enough to be seen as a vote. Do not look at the voter’s ballot. Put it in a secrecy folder and return the ballot to the voter. Ask the voter to review the ballot and to darken the marks. Then the voter may put the ballot back into the scanner.

If any of the following messages appear more than twice for the same ballot, call the auditor’s office to report the problem:

100—MISSED ORIENTATION MARKS/Turn Ballot Over and Try Again.

101—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

102—NO DATA FOUND/Please Reinsert Ballot After Beeps.

104—ORIENTATION SKIP ERROR.

106—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

If any of the following messages appear, ask the voter to remove the ballot and reinsert it. If the same message appears more than twice for the same ballot, call the auditor’s office to report the problem.

107—BALLOT ERROR: INVALID CC SEQUENCE.

108—BALLOT ERROR: INVALID CC TYPE.

109—BALLOT ERROR: INVALID CC SPLIT.

115—MISSED BACK ORIENTATION MARK/Turn Ballot Over and Try Again.

119—MULTIPLE BALLOTS DETECTED/Please Reinsert Ballot After Beeps. Did the voter actually try to put an extra ballot in? Is the ballot folded?

123—UNABLE TO READ TIMING BAND/Turn Ballot Over and Try Again.

124—BALLOT DRAGGED/Turn Ballot Over and Try Again.

126—BLACK CHECK: FACE DOWN HEAD EDGE/Turn Ballot Over and Try Again.

127—BLACK CHECK: FACE DOWN TAIL EDGE/Turn Ballot Over and Try Again.

128—BLACK CHECK: FACE UP HEAD EDGE/Turn Ballot Over and Try Again.

129—BLACK CHECK: FACE UP TAIL EDGE/Turn Ballot Over and Try Again.

130—POSSIBLE FOLDED BALLOT/Turn Ballot Over and Try Again.

**22.261(5) Record retention.** The Model 100 uses a thermal printer. The maximum anticipated life span of the results from each Model 100 is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the Model 100 was used.

[ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.262(52) Premier Election Solutions' AccuVote OS and AccuVote OSX precinct count devices.**

**22.262(1) Security.** The commissioner shall have a written security plan for the voting system. Access to voting equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

*a.* Passwords used at polling places shall be changed for each election.

*b.* For each election, the precinct chairperson shall be responsible for the custody and security of the control card and ballot box keys and the security of the voting system.

**22.262(2) Configuration choices.** The following selections are mandatory for all elections:

*a.* Reject settings shall be configured as follows:

(1) Return to voters ballots that include one or more overvoted races and blank-voted ballots. Include on the override log the number of times the override option was used for overvoted and blank-voted ballots.

(2) Divert to the write-in ballot bin only ballots with write-in votes.

(3) Do not include reject settings for blank voted races, undervoted races, straight party overvotes, multiparty overvotes or duplicate votes.

*b.* Tally settings shall be as follows:

(1) The straight party shall be “Exclusive.”

(2) The write-in setting shall be “Combined.”

**22.262(3) Zero totals reports.** Long form zero totals reports showing all counters at zero shall be printed following memory card programming, before counting ballots in the Pre-Election Mode and as the ballot reader is opened on election day.

**22.262(4) Ballot printing.** Although the Premier Election Solutions' GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. For all elections the voting target shall be an oval printed on the left side of each choice on the ballot.

**22.262(5) Preelection testing.** All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner’s discretion, the commissioner may conduct additional tests.

**721—22.263(52) AutoMARK Voter Assist Terminal (VAT).**

**22.263(1) Acceptance testing.** Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK VAT to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

**22.263(2) Audio ballot preparation.** Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate’s name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

**22.263(3) Preelection testing.** Each AutoMARK VAT shall be tested before each election in which it will be used. The commissioner may use the AutoMARK VAT to prepare some ballots for test decks required by rule 721—22.42(52). In addition, the commissioner shall:

*a.* Perform the test ballot print, then review the ballot to be sure that all ovals are darkened and the appropriate names are printed on each line.

*b.* Calibrate the touchscreen.

*c.* Select, then deselect each voting position in each race.

*d.* Verify that the overvote and undervote functions are programmed correctly.

*e.* Test the write-in function for each office on one ballot, and test all of the letters in the alphabet.

*f.* Use the audio ballot function to mark one ballot.

*g.* Tabulate the marked ballots from this test on the appropriate optical scanner.

*h.* Ensure that the AutoMARK VAT is available for demonstration at public tests.

**22.263(4) Compact flash memory cartridge or memory card.** The compact flash memory cartridge shall be installed before the AutoMARK VAT is locked, sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the

door with a numbered seal, record the seal number, and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the AutoMARK VAT is delivered to the polling place until the time the precinct election officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

**22.263(5) Calibration testing.** The commissioner may provide for printer and touchscreen calibration testing after delivery of the AutoMARK VAT to the polling place. If calibration testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day and shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, the date and time of the test, the name of the person performing the test, and the lifetime printer counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester and shall be labeled with the precinct name and election date. The completed calibration test ballot shall be returned to the commissioner and kept with the election records.

**22.263(6) AutoMARK VAT keys.** Possession of the AutoMARK VAT keys shall be restricted to precinct election officials and authorized members of the commissioner's staff.

**22.263(7) Table.** The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK VAT safely. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.263(8) Privacy.** The commissioner may provide each AutoMARK VAT with a privacy shield to protect the secrecy of each voter's ballot. The commissioner shall instruct the precinct election officials to position the AutoMARK VAT to provide maximum access for voters (especially voters who use wheelchairs) as well as privacy.

**22.263(9) Abandoned ballots.** If a voter or precinct election official discovers that a voter has left the AutoMARK VAT without printing the voter's ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing the ballot or making any changes, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

#### **721—22.264(52) Unisyn OpenElect OVO unit—preparation and use in elections.**

**22.264(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at the polling places on election day shall be changed for each election.

b. For each election, the precinct chairperson shall be responsible for the custody and security of the keys for the voting equipment, the ballot boxes and the security of the voting system on election day.

**22.264(2) Configuration choices.** The following selections are mandatory for all elections:

a. *Access, messaging and tabulating selections.* In the Election Manager, "Election Options" menu, the following selections shall be made:

(1) "Allow Add Precinct" shall be checked.

(2) "Full Voter Ballot Review" shall not be checked.

(3) "Consolidate Splits" shall be checked.

(4) "Overvote by Voter" shall not be checked.

(5) "No Undervote Check" shall be selected in the Undervote Checking dropdown menu.

b. *Printing selections.* In the Election Manager, "Printing Options" menu, the following selection shall be made:

(1) "Auto Print Alerts" shall not be checked.

(2) "Voter Receipts" shall not be checked.

(3) "Display Contest Results on Summary" shall be checked.

c. *Ballot acceptance by the OVO unit.* In an official election, the commissioner shall not program the OVO for unconditional acceptance of all ballots and shall program the OVO unit to accept undervoted ballots. The system shall also be programmed to query the voter in each of the following situations:

- (1) Overvoted ballot.
- (2) Blank ballot.
- (3) Unreadable ballot.

*d. Reports.* The following are required reports:

- (1) Opening the polls. Print a zero vote totals report.
- (2) Closing the polls. The poll report is the official record of the votes cast in the precinct on election day.
- (3) Certification text. The following shall appear at the end of the poll report:

We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted on this tabulating device at this election.

(Include signature lines for each of the officials to sign.)

**22.264(3) *Ballot layout.*** Although the Unisyn OpenElect voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48.

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the “yes” and “no” choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. For all elections, the voting target shall be printed on the left side of each choice on the ballot.

*b. Instructions for voters.* The ballots shall contain instructions for voters including:

- (1) How to mark the ballot;
- (2) Straight party voting instructions in general elections as required by Iowa Code section 49.37;
- (3) Where to find the judicial ballot (if any); and
- (4) Constitutional amendment (if any) as required by Iowa Code section 49.48 and notices to voters on ballots with public measures (if any) as required by Iowa Code section 49.47.

**22.264(4) *System error messages.*** Precinct election officials shall be provided with a list of known system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner’s designee for all other messages, errors or voting equipment malfunctions on election day.

**22.264(5) *Preelection testing.*** All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner’s discretion, additional logic and accuracy tests may be conducted.

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.265(52) Unisyn OpenElect OVI unit.**

**22.265(1) *Acceptance testing.*** Upon receipt of the equipment from the vendor, the commissioner shall subject each OVI unit to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of the functionalities of the device.

**22.265(2) *Audio ballot preparation.*** Each candidate shall have an opportunity to provide a record of the proper pronunciation of the candidate’s name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

**22.265(3) *Timeout value.*** The OVI timeout value shall be set to 600 seconds. Precinct election officials shall monitor the use of the OVI unit to ensure that voting sessions are not automatically terminated due to inactivity. If a voter abandons a voting session initiated on the OVI unit without printing a ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing it or making any changes to the voter’s choices before the OVI unit times out due to inactivity, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

**22.265(4) Preelection testing.** Each OVI unit shall be tested before each election in which it will be used. The commissioner must use the OVI unit to prepare some ballots for the test decks as required by paragraph 22.42(1)“d.” In addition, the commissioner shall verify that:

- a. The vote response fields on the screen align with the candidate names or choices.
- b. All contests and candidates appear on the screen for each precinct.
- c. All contests and candidates are included in the audio ballot for each precinct.
- d. All voting positions in each race can be selected, then deselected, using the touchscreen and the keypad.
- e. Selections on the printed ballots accurately reflect the voter’s choices.
- f. Overvote and undervote functions are programmed correctly.
- g. The write-in function for each office is working correctly. All letters in the alphabet must be tested.
- h. There is enough paper on the paper roll to print a minimum of ten ballots for the election in which the OVI unit is being used.

**22.265(5) Availability at public test.** The commissioner shall ensure that the OVI unit is available for demonstration at public tests.

**22.265(6) TM.** The TM device used with the OVI unit shall be installed before the OVI unit is locked, sealed and transported to the polling place for election day. The commissioner shall lock and seal the OVI unit, record the seal number and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the OVI unit is delivered to the polling place until the time the precinct officials arrive, the OVI unit shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

**22.265(7) Touchscreen and printer testing.** The commissioner may provide for printer and touchscreen testing after delivery of the OVI unit to the polling place. If touchscreen testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day. Staff shall keep a log for each OVI unit and record the machine serial number, precinct name or number, nature of the test, date and time of the test and name of the person performing the test.

**22.265(8) OVI unit keys.** Possession of the OVI unit keys shall be restricted to the precinct chairperson and authorized members of the commissioner’s staff.

**22.265(9) Table or voting booth.** The table or voting booth used to support the OVI unit shall meet the following requirements:

- a. The table shall be sturdy enough to hold the OVI unit safely.
- b. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep.
- c. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.265(10) Privacy.** The commissioner shall instruct the precinct election officials to position the OVI unit to provide maximum privacy and access to voters.

**22.265(11) Abandoned ballots.** If a voter or a precinct election official discovers that a voter has left the voter’s ballot at the OVI unit, the two precinct election officials designated to assist voters shall enclose the ballot in a secrecy folder and immediately deposit the ballot in the tabulating device.

**22.265(12) Extra paper rolls.** Each precinct in which an OVI unit is being used shall be equipped with an extra paper roll for the OVI unit, and precinct election officials shall be instructed as to the method of replacing the paper roll.

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.266 to 22.339** Reserved.

OPTICAL SCAN VOTING SYSTEM USED FOR ABSENTEE AND SPECIAL VOTERS PRECINCT

**721—22.340(52) Processing.** All scanners used to tabulate absentee and provisional ballots shall be configured to sort blank ballots and ballots containing marks in write-in vote targets for review by the resolution board. The scanners shall not be configured to sort ballots with overvotes. However, if it is

not possible to configure the scanners used to count absentee ballots differently from those used at the polling places, the person operating the scanner shall override the scanner and accept overvoted ballots as they are processed. The resolution board shall follow the requirements of 721—subrule 26.2(2). The commissioner shall provide the resolution board with a copy of 721—Chapter 26, “Counting Votes.”

This rule is intended to implement Iowa Code section 52.33 as amended by 2007 Iowa Acts, Senate File 369, section 9.

**721—22.341(52) Reporting results from absentee ballots and provisional ballots.** Absentee and provisional ballot results shall be reported as a single precinct as required by subrule 22.102(7).

**721—22.342(52) Tally list for absentee and special voters precinct.**

**22.342(1)** Write-in votes shall be reported on a separate tally sheet which provides a column for the names of offices, a column for the names of persons receiving votes, space to tally the votes received, and a column in which to report the total number of votes cast for each person. In tally lists provided for primary elections, separate pages shall be provided to tally the write-in votes for each political party. Each member of the board who participated in the count shall attest to each tally sheet for write-in votes.

**22.342(2)** The officials shall certify the procedures followed. The certification shall be in substantially the following form:

Absentee and Special Voters Tally Certificate

\_\_\_\_\_ County

We, the undersigned officials of the Absentee and Special Voters Precinct for this county, do hereby certify that all ballots delivered to the Board for this election were tabulated as shown in the attached report.

We further certify that a record of any write-in votes or other votes manually counted pursuant to Iowa Code chapter 52 is included in this Tally List, and that the numbers entered in the column headed “Total Votes” are the correct totals of all votes manually counted by us.

Signed at \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_, \_\_\_:\_\_\_ a.m./p.m.

[signatures of officials] 1. \_\_\_\_\_  
2. \_\_\_\_\_ (etc.)

**22.342(3)** The record generated by the tabulating equipment shall be attached to or enclosed with the tally list and shall constitute the official return of the precinct.

This rule is intended to implement Iowa Code section 52.33 as amended by 2007 Iowa Acts, Senate File 369, section 9.

**721—22.343(39A,53) Counting absentee ballots on the day before the general election.** When absentee ballots are tabulated on the day before the election as permitted or required by Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670, the absentee and special voters precinct board and county commissioner shall implement the following security precautions:

**22.343(1)** *Seal and label voted ballot envelopes or other containers with date of tabulation.* The precinct election officials shall seal all ballots tabulated on the day before the election in a voted ballot envelope or other container labeled with the date of tabulation. The precinct election officials shall seal and sign the envelope or other container in a manner that will make it evident if the envelope or other container is opened.

**22.343(2)** *Ensure secure storage of all ballots.* Before adjourning for the day, the precinct election officials shall transfer custody of all absentee ballots to the commissioner. The commissioner shall ensure all absentee ballots are stored in a secure location until tabulation is resumed on election day.

**22.343(3)** *Ensure memory card security.* Before the absentee and special voters precinct board adjourns for the day, the memory card used in the tabulator(s) on the day before the election shall be secured by the precinct election officials in one of the following ways:

*a.* The memory card may be left in the tabulator when a tamper-evident seal is affixed over the memory card in a manner that will make it evident if the seal is removed.

*b.* The memory card may be removed from the tabulator and placed in an envelope. The precinct election officials shall seal the envelope in a manner that will make it evident if the envelope is opened.

**22.343(4)** *Ensure security of the tabulator(s).* Before adjourning for the day, the precinct election officials shall ensure the security of the tabulator(s). The tabulator(s) must be stored in a secure location until the absentee and special voters precinct board resumes tabulation on election day.

**22.343(5)** *No results tape printing on the day before the election.* No results tapes may be printed from the tabulator(s) on the day before the election.

**22.343(6)** *No upload of results to tabulating software until election day.* No results may be uploaded or input into tabulating software on the day before the election.

**22.343(7)** *Verify no tampering before resuming tabulation on election day.* Before tabulation resumes on election day, the absentee and special voters precinct board shall verify the tabulator(s), memory card(s) and memory card port(s) have not been obviously tampered with overnight.

**22.343(8)** *Resume tabulation.* The absentee and special voters precinct board shall resume tabulation using one of the following methods:

*a.* Using the same memory card(s) used on the day before the election and resuming tabulation.

*b.* Using a new memory card(s) and compiling the results contained on the memory card(s) used on election day and on the day before the election.

**22.343(9)** *Print audit logs.* After the election, the audit logs must be printed and be available for public inspection.

This rule is intended to implement Iowa Code section 39A.5, section 1, paragraph “a,” subparagraph (3), and Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670.  
[ARC 8698B, IAB 4/21/10, effective 6/15/10]

**721—22.344 to 22.349** Reserved.

**721—22.350(52) Election Systems & Software models.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.351(52) Diebold Election Systems’ AccuVote-OS central count process.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.352 to 22.430** Reserved.

#### VOTING MACHINES

**721—22.431(52) Temporary use of printed ballots in voting machine precincts.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.432(52) Abandoned ballots.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.433(52) Prohibited uses for direct recording electronic voting machines.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.434(52) Audio ballot preparation.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.435 to 22.460** Reserved.

**721—22.461(52) MicroVote Absentee Voting System.** Rescinded IAB 8/1/07, effective 7/13/07.

**721—22.462(52) Fidlar & Chambers’ Absentee Voting System.** Rescinded IAB 10/30/02, effective 1/1/03.

**721—22.463(52) Election Systems & Software iVotronic.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.464(52) Diebold Election Systems AccuVote TSX DRE.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.465 to 22.499** Reserved.

**721—22.500(52) Blended systems.** Rescinded IAB 10/8/08, effective 9/19/08.

These rules are intended to implement Iowa Code chapter 52.

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[Filed Emergency ARC 0238C, IAB 8/8/12, effective 7/11/12]

CHAPTER 28  
VOTER REGISTRATION FILE (I-VOTERS) MANAGEMENT

**721—28.1(47,48A) State registrar’s responsibility.** The state registrar of voters is responsible for the implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration file of every legally registered voter in the state. This file is known as I-VOTERS. These rules regulate access to the file by county registrars and others and set forth protocols for adding, changing or deleting file information.

**721—28.2(48A) Access and fees.**

**28.2(1)** The state registrar and county registrars shall grant access to the I-VOTERS database consistent with the Iowa Code and the security plan for the system. Authorized users of the system shall be issued secure password-protected access that is monitored by the state registrar. Access may be denied or revoked by the state registrar for violation of the security policy.

**28.2(2)** Fees shall be assessed by the state registrar and county registrars for voter registration information provided to the public or to authorized requesters consistent with Iowa Code chapter 48A and the rules of the voter registration commission. The state registrar shall establish appropriate forms for voter registration information requests. Fees collected by the state registrar shall be deposited in the state general fund. Fees collected by county registrars shall be deposited in the appropriate county fund.

**28.2(3)** Statewide or congressional district voter registration information from I-VOTERS may be obtained only from the state registrar. Voter registration information from I-VOTERS other than statewide or congressional district information may be obtained from the state registrar or a county registrar. A county registrar may provide from I-VOTERS voter registration information for a district or other jurisdiction that is located in whole or in part within the registrar’s county.

**721—28.3(48A) Duplicate and multiple voter registration record deletion process.**

**28.3(1)** The state registrar shall provide a search function within the I-VOTERS software to search for likely duplicate or multiple voter registration records. County registrars shall have the capability to activate this function.

**28.3(2)** During each calendar quarter, the county registrar shall activate the search function described in 28.3(1) and review the list of likely duplicate or multiple voter registration records. The county registrar shall resolve duplicate or multiple records for the same voter. No voter shall have more than one voter record. The voter record associated with the most recent registration or other voter-initiated activity shall be considered the voter’s current record. The voter shall be registered in the county of current record, and the voter record in any other county shall be merged with the record in the current county. Individual voter history and other voter data shall be transferred to the voter’s record in the current county of registration.

**28.3(3)** The state registrar shall periodically engage in interstate checking of voter registration records with cooperating states for the purpose of identifying duplicate or multiple voter registration records. A list of likely matches of records based upon predetermined search criteria shall be timely sent to each county registrar.

**28.3(4)** Within 15 days of the receipt of a list produced by the state registrar in accordance with 28.3(3), the county registrar shall review the list of likely duplicate or multiple voter registration records and determine the accuracy of the search results. If the voter is found to be registered to vote in another state more recently than in Iowa, the commissioner shall make the voter’s status “inactive” and the voter shall be mailed a National Voter Registration Act-compliant confirmation notice. The notice shall contain a statement in substantially the following form:

Information received by this office indicates that you are no longer a resident at the address printed on the reverse side of this card. If this information is not correct, and you still live at that address, please complete and mail the attached postage-paid card at least 10 days before the primary or general election, or at least 11 days before any other election at which you wish

to vote. If the information is correct and you have moved within the county, you may update your registration by listing your new address on the card and mailing it back. If you have moved outside the county, please contact a local official in your new location for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in [name of county] County, Iowa. If you do not return the card and you do not vote in an election in [name of county] County, Iowa, on or before (date of second general election following the date of the notice), your name will be removed from the list of voters in that county.

**28.3(5)** County registrars shall cooperate with each other to ensure that voter records are properly merged into the current county file.

[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.**

**28.4(1)** Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of convicted felons and a list of convicted felons whose voting rights have been restored. Periodically, these lists shall be matched with I-VOTERS. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

**28.4(2)** Within 15 days of the receipt of the list produced by the state registrar in accordance with 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results and cancel the registrations of those voters found to be ineligible to vote. Notice shall be sent to the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

**28.4(3)** New applicants for registration entered into I-VOTERS by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule 28.4(2) above.

**721—28.5(47,48A) Noncitizen registered voter identification and removal process.**

**28.5(1)** *Periodic matching of foreign national files and the voter registration list.* The state registrar of voters may periodically engage in obtaining lists of foreign nationals who are residing in Iowa from a federal or state agency. The list of foreign nationals may be matched against the voter registration records to determine likely matches based on predetermined search criteria.

**28.5(2)** *Confirming matches between the foreign national file and the voter registration list.* After producing a list of likely matches, the secretary of state's office shall turn the list of likely matches over to the appropriate Iowa agency for additional follow-up and a determination as to whether the voter registration record is an exact match to an individual listed on the foreign national file. The secretary of state's office shall also determine whether the registrant has obtained citizenship status subsequent to the date the record in the file was generated.

**28.5(3)** *Removing confirmed matches from the voter registration list.* Upon receipt of information indicating a noncitizen is registered to vote, the secretary of state's office shall take the following steps to ensure removal of the voter's name from the voter registration list.

*a. Voter notification.* The secretary of state's office shall notify the voter that the secretary of state's office has received information indicating the registered voter may not be a citizen of the United States and may be illegally registered to vote. The notice shall advise the registrant that illegally registering to vote is classified as a class "D" felony under Iowa law and shall further advise the registrant that if the information received by the secretary of state is correct, the voter should request cancellation of the voter registration record by sending a written notice to the county registrar of voters in the county where the registrant is currently registered to vote. The voter shall also be notified of the voter's right to dispute and

respond to the information received by the secretary of state's office. The voter shall further be advised that failure to request removal from the voter registration list or respond to the notice within 14 days of the date of the notice may result in the commencement of a challenge to the voter's registration as set forth in Iowa Code section 48A.14. The notice from the secretary of state shall include a postage-paid envelope and response form.

*b. County registrar notification.* If a voter receives a notice from the secretary of state's office pursuant to paragraph 28.5(3) "a" and fails to respond to the notice within 14 days, the secretary of state's office shall also notify the county registrar that the secretary of state's office has received information indicating the registered voter may not be a citizen of the United States and may be illegally registered to vote. The county registrar shall notify the secretary of state's office when any voter who is the subject of one of these notices requests cancellation of the voter's record.

*c. Failure of registrant to request removal from voter registration list.* If a registered voter receives notice pursuant to this rule from the secretary of state's office and does not respond to the notice by either notifying the secretary of state's office that the registrant believes the secretary of state's information to be erroneous or by requesting removal of the registrant's name from the voter registration list, the voter's name may be removed pursuant to the process provided in Iowa Code sections 48A.14 through 48A.16.

*d. Noncitizen registrant with active absentee ballot request.* If a county registrar receives notice pursuant to this rule from the secretary of state's office for a registrant who has an active absentee ballot request on the voter's record, the commissioner shall attach the notice from the secretary of state's office regarding the registrant to the voter's absentee ballot affidavit envelope if the absentee ballot is returned to the auditor's office. The commissioner shall instruct the precinct election officials to challenge the voter's absentee ballot as provided in Iowa Code section 53.31.

*e. Noncitizen registrant with voting history on voter record.* If a county registrar receives notice pursuant to this rule from the secretary of state's office for a registrant who has previous voting history on the voter's record, the commissioner shall immediately print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes that are still in the custody of the commissioner and make a copy of the notice received by the county registrar pursuant to this rule. The foregoing list of documents shall be forwarded to the secretary of state's office within 30 days of receipt of the notice.

This rule is intended to implement Iowa Code chapters 39A, 48A, 49 and 53.

[ARC 0272C, IAB 8/8/12, effective 7/20/12]

These rules are intended to implement Iowa Code section 47.7(2) and chapter 48A.

[Filed emergency 6/1/06 after Notice 4/26/06—published 6/21/06, effective 7/1/06]

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[Filed Emergency ARC 0272C, IAB 8/8/12, effective 7/20/12]



CHAPTER 615  
SANCTIONS

[Prior to 6/3/87, Transportation Department[820]—(07,C) Ch 6]

**761—615.1(321) Definitions.** The definitions in 761—600.1(321) apply to this chapter. In addition:

“*Accident free*” as used in Iowa Code section 321.180B means the driver has not been involved in a contributive accident. “*Involvement in a motor vehicle accident*” as used in Iowa Code section 321.180B means involvement in a contributive accident.

“*Contributive accident*” means an accident for which there is evidence in departmental records that the driver performed an act which resulted in or contributed to the accident, or failed to perform an act which would have avoided or contributed to the avoidance of the accident.

“*Conviction free*” as used in Iowa Code section 321.180B means the driver has not been convicted of a moving violation.

“*Deny*” or “*denial*” means a rejection of an application for a license or a refusal to issue, renew or reinstate a license.

“*Moving violation,*” unless otherwise provided in this chapter, means any violation of motor vehicle laws except:

1. Violations of equipment standards to be maintained for motor vehicles.
2. Parking violations as defined in Iowa Code section 321.210.
3. Child restraint and safety belt and harness violations under Iowa Code sections 321.445 and 321.446.
4. Violations of registration, weight and dimension laws.
5. Operating with an expired license.
6. Failure to appear.
7. Disturbing the peace with a motor vehicle.
8. Violations of Iowa Code Supplement section 321.20B for failure to provide proof of financial liability coverage.

“*Sanction*” means a license denial, cancellation, suspension, revocation, bar or disqualification.

This rule is intended to implement Iowa Code sections 321.1, 321.178, 321.180A, 321.189, 321.194, 321.210, 321.215, 321.445, 321.446 and 321.555.

**761—615.2(321) Scope.** This chapter of rules applies to any license, as defined in 761—600.1(321). However:

**615.2(1)** Rules specifically addressing denial, cancellation or disqualification of a commercial driver’s license are found in 761—Chapter 607, “Commercial Driver Licensing.”

**615.2(2)** Rules implementing Iowa Code chapter 321J are found in 761—Chapter 620, “OWI and Implied Consent.”

**615.2(3)** Rules implementing Iowa Code chapter 321A are found in 761—Chapter 640, “Financial Responsibility.”

This rule is intended to implement Iowa Code chapters 321, 321A and 321J.

**761—615.3(17A) Information and address.** Applications, forms and information concerning license sanctions are available at any driver’s license examination station or at the address in 761—600.2(17A).

This rule is intended to implement Iowa Code section 17A.3.

**761—615.4(321) Denial for incapability.**

**615.4(1)** A person who has a valid Iowa license that would otherwise be suspended for incapability shall, in lieu of a suspension, be denied further licensing if there is less than 30 days’ validity on the license.

- a. The denial shall be effective when the license is no longer valid.
- b. The license shall be surrendered to the department. The department shall issue a temporary driving permit which allows the person to drive until the effective date of the denial.

**615.4(2)** If a person who is denied licensing for incapability does not have a valid Iowa license, the department may refuse orally to issue a license, effective immediately, or may deny licensing in writing, effective on the date the denial notice is served.

This rule is intended to implement Iowa Code sections 321.177 and 321.210.

**761—615.5** and **615.6** Reserved.

**761—615.7(321) Cancellations.**

**615.7(1)** The department shall cancel the license of an unmarried minor upon receipt of a written withdrawal of consent from the person who consented to the minor's application. The department shall also cancel a minor's license upon receipt of evidence of the death of the person who consented to the minor's application.

**615.7(2)** The department shall cancel a motorized bicycle license when the licensee is convicted of one moving violation. Reapplication may be made 30 days after the date of cancellation.

**615.7(3)** The department may cancel a license when the person was not entitled or is no longer entitled to a license, failed to give correct and required information, or committed fraud in applying.

**615.7(4)** A cancellation shall begin ten days after the department's notice of cancellation is served.

This rule is intended to implement Iowa Code sections 321.184, 321.185, 321.189, 321.201 and 321.215.

**761—615.8** Reserved.

**761—615.9(321) Habitual offender.**

**615.9(1)** The department shall declare a person to be a habitual offender under Iowa Code subsection 321.555(1) in accordance with the following point system:

*a.* Points shall be assigned to convictions as follows:

<u>Conviction</u>	<u>Points</u>
Perjury or the making of a false affidavit or statement under oath to the department of public safety	2 points
Driving while under suspension, revocation or denial (except Iowa Code chapter 321J)	2 points
Driving while under Iowa Code chapter 321J revocation or denial	3 points
Driving while barred	4 points
Operating a motor vehicle in violation of Iowa Code section 321J.2	4 points
An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used	5 points
Failure to stop and leave information or to render aid as required by Iowa Code sections 321.261 and 321.263	5 points
Eluding or attempting to elude a pursuing law enforcement vehicle in violation of Iowa Code section 321.279	5 points
Serious injury by a vehicle in violation of Iowa Code subsection 707.6A(3)	5 points
Manslaughter resulting from the operation of a motor vehicle	6 points

*b.* Based on the points accumulated, the person shall be barred from operating a motor vehicle on the highways of this state as follows:

<u>Points</u>	<u>Length of bar</u>
6 – 7	2 years
8 – 9	3 years
10 – 12	4 years
13 – 15	5 years
16+	6 years

**615.9(2)** A person declared to be a habitual offender under Iowa Code subsection 321.555(2) shall be barred from operating a motor vehicle on the highways of this state for one year.

**615.9(3)** A person declared to be a habitual offender under Iowa Code Supplement section 321.560, unnumbered paragraph 2, shall be barred from operating a motor vehicle on the highways of this state beginning on the date the previous bar expires.

This rule is intended to implement Iowa Code sections 321.555, 321.556 and 321.560.

**761—615.10** Reserved.

**761—615.11(321) Periods of suspension.**

**615.11(1) *Length.*** The department shall not suspend a person’s license for less than 30 days nor for more than one year unless a statute specifies or permits a different period of suspension.

**615.11(2) *Extension of suspension.*** The department shall extend the period of license suspension for an additional like period when the person is convicted of operating a motor vehicle while the person’s license is suspended, unless a statutory exception applies. If the person’s driving record does not indicate what the original grounds for suspension were, the period of license suspension shall not exceed six months.

This rule is intended to implement Iowa Code sections 321.212 and 321.218.

**761—615.12(321) Suspension of a habitually reckless or negligent driver.**

**615.12(1)** The department may suspend a person’s license if the person is a habitually reckless or negligent driver of a motor vehicle.

*a. “Habitually reckless or negligent driver”* means a person who has accumulated a combination of three or more contributive accidents and convictions for moving violations or three or more contributive accidents within a 12-month period.

*b. “Contributive or contributed”* means that there is evidence in departmental records that the driver performed an act which resulted in or contributed to an accident, or failed to perform an act which would have avoided or contributed to the avoidance of an accident.

**615.12(2)** In this rule, the speeding violations specified in Iowa Code paragraph 321.210(2) “d” are not included.

**615.12(3)** The suspension period shall be at least 60 days.

This rule is intended to implement Iowa Code section 321.210.

**761—615.13(321) Suspension of a habitual violator.**

**615.13(1)** The department may suspend a person’s license when the person is a habitual violator of the traffic laws. “Habitual violator” means that the person has been convicted of three or more moving violations committed within a 12-month period.

**615.13(2)** The minimum suspension periods shall be as follows unless reduced by a driver’s license hearing officer based on mitigating circumstances:

3 convictions in 12 months	90 days
4 convictions in 12 months	120 days
5 convictions in 12 months	150 days
6 convictions in 12 months	180 days
7 or more convictions in 12 months	1 year

**615.13(3)** In this rule, the speeding violations specified in Iowa Code paragraph 321.210(2)“d” are not included.

This rule is intended to implement Iowa Code section 321.210.

**761—615.14(321) Suspension for incapability.** The department may suspend a person’s license when the person is incapable of safely operating a motor vehicle.

**615.14(1)** Suspension for incapability may be based on one or more of the following:

*a.* Receipt of a medical report stating that the person is not physically or mentally capable of safely operating a motor vehicle.

*b.* Failure of the person to appear for a required reexamination or failure to submit a required medical report within the specified time.

*c.* Ineligibility for licensing under Iowa Code subsections 321.177(4) to 321.177(7).

**615.14(2)** The suspension period shall be indefinite but shall be terminated when the department receives satisfactory evidence that the licensee has been restored to capability.

**615.14(3)** A person whose license has been suspended for incapability may be eligible for a special noncommercial instruction permit under rule 761—602.21(321).

This rule is intended to implement Iowa Code sections 321.177, 321.210, and 321.212.

**761—615.15(321) Suspension for unlawful use of a license.**

**615.15(1)** The department may suspend a person’s license when the person has been convicted of unlawful or fraudulent use of the license or if the department has received other evidence that the person has violated Iowa Code section 321.216, 321.216A or 321.216B.

**615.15(2)** The suspension period shall be at least 30 days.

**615.15(3)** A suspension for a violation of Iowa Code section 321.216B shall not exceed six months.

This rule is intended to implement Iowa Code sections 321.210, 321.212, 321.216, 321.216A and 321.216B.

**761—615.16(321) Suspension for out-of-state offense.** The department may suspend a person’s license when the department is notified by another state that the person committed an offense in that state which, if committed in Iowa, would be grounds for suspension. The notice may indicate either a conviction or a final administrative decision. The period of the suspension shall be the same as if the offense had occurred in Iowa.

This rule is intended to implement Iowa Code sections 321.205 and 321.210.

**761—615.17(321) Suspension for a serious violation.**

**615.17(1)** The department may suspend a person’s license when the person has committed a serious violation of the motor vehicle laws.

**615.17(2)** “*Serious violation*” means that:

*a.* The person’s conviction for a moving violation was accompanied by a written report from the arresting officer, the prosecuting attorney or the court indicating that the violation was unusually serious. The suspension period shall be at least 60 days.

*b.* The person was convicted of a moving violation which contributed to a fatal motor vehicle accident. “Contributed” is defined in paragraph 615.12(1)“b.” The suspension period shall be at least 120 days.

c. The person was convicted for speeding 25 miles per hour (mph) or more above the legal limit. The minimum suspension period shall be as follows unless reduced by a driver's license hearing officer based on mitigating circumstances:

25 mph over the legal limit	60 days
26 mph over the legal limit	65 days
27 mph over the legal limit	70 days
28 mph over the legal limit	75 days
29 mph over the legal limit	80 days
30 mph over the legal limit	90 days
31 mph over the legal limit	100 days
32 mph over the legal limit	110 days
33 mph over the legal limit	120 days
34 mph over the legal limit	130 days
35 mph over the legal limit	140 days
36 mph over the legal limit	150 days
37 mph over the legal limit	160 days
38 mph over the legal limit	170 days
39 mph over the legal limit	180 days
40 mph over the legal limit	190 days
41 mph over the legal limit	210 days
42 mph over the legal limit	230 days
43 mph over the legal limit	250 days
44 mph over the legal limit	270 days
45 mph over the legal limit	290 days
46 mph over the legal limit	310 days
47 mph over the legal limit	330 days
48 mph over the legal limit	350 days
49 mph or more over the legal limit	one year

d. The person was convicted of violating Iowa Code subsection 321.372(3). The suspension period shall be:

- (1) 30 days for a first conviction under Iowa Code subsection 321.372(3).
- (2) 90 days for a second conviction under Iowa Code subsection 321.372(3).
- (3) 180 days for a third or subsequent conviction under Iowa Code subsection 321.372(3).

This rule is intended to implement Iowa Code sections 321.210, 321.372 as amended by 2012 Iowa Acts, Senate File 2218, sections 2 and 5, and 321.491.

[ARC 0250C, IAB 8/8/12, effective 9/12/12]

**761—615.18(321) Suspension under the nonresident violator compact.**

**615.18(1)** The department may suspend a person's license when a report is received from another state under the nonresident violator compact that an Iowa licensee has failed to comply with the terms of a traffic citation.

**615.18(2)** The suspension shall begin 30 days after the department's notice of suspension is served.

**615.18(3)** The suspension shall continue until the department issues a notice terminating the suspension. The department shall terminate the suspension when it receives evidence of compliance with the terms of the citation.

This rule is intended to implement Iowa Code sections 321.210 and 321.513.

**761—615.19(321) Suspension for a charge of vehicular homicide.** In accordance with Iowa Code section 321.210D, the department shall suspend a person's license when the department receives notice from the clerk of the district court that an indictment or information has been filed charging the person with homicide by vehicle under Iowa Code section 707.6A, subsection 1 or 2. The suspension shall begin ten days after the department's suspension notice is issued.

This rule is intended to implement Iowa Code section 321.210D.

**761—615.20(321) Suspension for moving violation during probation.** The department may suspend the license of a person convicted of a moving violation pursuant to Iowa Code section 321.210C. The suspension period shall not exceed one year.

This rule is intended to implement Iowa Code section 321.210C.

**761—615.21(321) Suspension of a minor's school license and minor's restricted license.**

**615.21(1) Suspension of a minor's school license.**

*a.* The department may suspend a minor's school license upon receiving notice of the licensee's conviction for one moving violation or evidence of one or more accidents chargeable to the licensee.

*b.* The department may also suspend a minor's school license when the department receives written notice from a peace officer, parent, custodian or guardian, school superintendent, or superintendent's designee that the licensee has violated the restrictions of the license.

*c.* The suspension period under this subrule shall be at least 30 days.

**615.21(2) Suspension of a minor's restricted license.** The department may suspend a minor's restricted license upon receiving notice of the licensee's conviction for one moving violation. The suspension period shall be at least 30 days.

This rule is intended to implement Iowa Code sections 321.178 and 321.194.

**761—615.22(321) Suspension for nonpayment of fine, penalty, surcharge or court costs.**

**615.22(1) Report to the department.** The department shall suspend a person's privilege to operate motor vehicles in Iowa:

*a.* When the department is notified by a clerk of the district court on Form No. 431037 that the person has been convicted of violating a law regulating the operation of motor vehicles, that the person has failed to pay the fine, penalty, surcharge or court costs arising out of the conviction, and that 60 days have elapsed since the person was mailed a notice of nonpayment from the clerk of the district court, and

*b.* When, in accordance with subrule 615.22(2), the person has not timely raised the defense of inability to pay, or the department determines that the person is able to pay the fine, penalty, surcharge and court costs.

**615.22(2) Ability to pay.**

*a.* The department shall presume that a person is able to pay the fine, penalty, surcharge and court costs when it receives the "Notice to Suspend" copy of Form No. 431037 from the clerk of the district court.

*b.* The department shall not consider inability to pay as a defense to license suspension unless the person files Form No. 431038 with the department within 45 days after the clerk of the district court mailed notice of nonpayment to the person.

*c.* If the department determines that the person is unable to pay, the department shall notify the person and the clerk of the district court of that decision and shall take no further action. If the department determines that the person is able to pay, the department shall suspend the person's privilege to operate motor vehicles in Iowa as outlined in subrule 615.22(1).

**615.22(3) Suspension.**

*a.* The suspension period shall begin 30 days after the notice of suspension is served.

*b.* The suspension shall continue until the department has issued a notice terminating the suspension. The department shall terminate the suspension when it receives evidence that all appropriate payments have been made.

c. An informal settlement, hearing or appeal to contest the suspension shall be limited to a determination of whether the facts required by Iowa Code section 321.210A and this rule are true. The merits of the conviction shall not be considered.

This rule is intended to implement Iowa Code section 321.210A.

#### **761—615.23(321) Suspensions for juveniles.**

##### **615.23(1) *Suspension for juveniles adjudicated delinquent for certain offenses.***

a. Pursuant to Iowa Code section 321.213A, the department shall suspend the license of a person for one year upon receipt of an adjudication and dispositional order from the clerk of the juvenile court.

b. The department may issue to a person suspended under this subrule a temporary restricted license in accordance with rule 761—615.45(321) if issuance is permitted under Iowa Code section 321.215 and the person is otherwise eligible for the license. To obtain a temporary restricted license that is valid for educational purposes, the applicant must meet the requirements for issuance of a minor's school license under Iowa Code section 321.194 and rule 761—602.26(321).

##### **615.23(2) *Suspension for juvenile's failure to attend school.***

a. The department shall suspend the driver's license of a person under the age of 18 upon receipt of notification from the appropriate school authority that the person does not attend school.

b. "School" means a public school, an accredited nonpublic school, competent private instruction in accordance with the provisions of Iowa Code chapter 299A, an alternative school or adult education classes.

c. "Appropriate school authority" means the superintendent of a public school or the chief administrator of an accredited nonpublic school, an alternative school or adult education.

d. The suspension shall continue until the person reaches the age of 18 or until the department receives notification from the appropriate school authority that the person is attending school.

e. The department may issue to the person a minor's restricted license in accordance with Iowa Code section 321.178 and rule 761—602.25(321) if the person is eligible for the license.

This rule is intended to implement Iowa Code sections 232.52(2)"a"(4), 299.1B, 321.213, 321.213A, 321.213B, and 321.215.

#### **761—615.24(252J,261) Suspension upon receipt of a certificate of noncompliance.**

##### **615.24(1) *From child support recovery unit.***

a. The department shall suspend a person's Iowa-issued driver's license upon receipt of a certificate of noncompliance from the child support recovery unit.

b. The suspension shall begin 30 days after the department's notice of suspension is served.

c. The suspension shall continue until receipt of a withdrawal of the certificate of noncompliance from the child support recovery unit.

d. The filing of an application pursuant to Iowa Code section 252J.9 stays the suspension pending the outcome of the district court hearing.

##### **615.24(2) *From college student aid commission.***

a. The department shall suspend a person's Iowa-issued driver's license upon receipt of a certificate of noncompliance from the college student aid commission.

b. The suspension shall begin 30 days after the department's notice of suspension is served.

c. The suspension shall continue until receipt of a withdrawal of the certificate of noncompliance from the college student aid commission.

d. The filing of an application pursuant to Iowa Code section 261.127 stays the suspension pending the outcome of the district court hearing.

##### **615.24(3) *From department of revenue.*** Rescinded IAB 2/8/12, effective 3/14/12.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 261.126 and 261.127. [ARC 7902B, IAB 7/1/09, effective 8/5/09; ARC 9991B, IAB 2/8/12, effective 3/14/12]

**761—615.25(321) Suspension—driver's license indebtedness clearance pilot project.** Rescinded IAB 11/8/06, effective 12/13/06.

**761—615.26(321) Suspension or revocation for violation of a license restriction.** The department may suspend or revoke a person's license when the department receives satisfactory evidence of a violation of a restriction imposed on the license. The suspension or revocation period shall be at least 30 days.

This rule is intended to implement Iowa Code section 321.193.

**761—615.27 and 615.28** Reserved.

**761—615.29(321) Mandatory revocation.**

**615.29(1)** The department shall revoke a person's license upon receipt of a record of the person's conviction for an offense listed under Iowa Code section 321.209 or upon receipt of an order issued pursuant to Iowa Code subsection 901.5(10).

**615.29(2)** The department shall revoke a person's license under Iowa Code subsection 321.209(2) upon receipt of a record of the person's conviction for a felony:

*a.* Which provides specific factual findings by the court that a motor vehicle was used in the commission of the offense,

*b.* Which is accompanied by information from the prosecuting attorney indicating that a motor vehicle was used in the commission of the crime, or

*c.* Where the elements of the offense actually required the use of a motor vehicle.

**615.29(3)** The revocation period shall be at least one year except:

*a.* The revocation period for two convictions of reckless driving shall be at least five days and not more than 30 days.

*b.* The revocation period for a first offense for drag racing shall be six months if the violation did not result in personal injury or property damage.

*c.* The revocation period for an order issued pursuant to Iowa Code subsection 901.5(10) is 180 days.

This rule is intended to implement Iowa Code sections 321.209, 321.212, 321.261 and 707.6A.

**761—615.30(321) Revocation for out-of-state offense.**

**615.30(1)** The department may revoke an Iowa resident's license when the department is notified by another state that the person committed an offense in that state which, if committed in Iowa, would be grounds for revocation. The notice may indicate either a conviction or a final administrative decision. The period of the revocation shall be the same as if the offense had occurred in Iowa.

**615.30(2)** Rescinded IAB 11/20/96, effective 12/25/96.

This rule is intended to implement Iowa Code section 321.205.

**761—615.31(321) Revocation for violation of a license restriction.** Rescinded IAB 11/18/98, effective 12/23/98.

**761—615.32(321) Extension of revocation period.** The department shall extend the period of license revocation for an additional like period when the person is convicted of operating a motor vehicle while the person's license is revoked.

This rule is intended to implement Iowa Code sections 321.218 and 321J.21.

**761—615.33(321) Revocation of a minor's license.**

**615.33(1)** The department shall revoke a minor's restricted license upon receiving a record of the minor's conviction for two or more moving violations.

**615.33(2)** The department shall revoke a minor's school license upon receiving a record of the minor's conviction for two or more moving violations.

This rule is intended to implement Iowa Code subsection 321.178(2) and section 321.194.

**761—615.34(321J) Other revocations.** Rescinded IAB 11/18/98, effective 12/23/98.

**761—615.35** Reserved.

**761—615.36(321) Effective date of suspension, revocation, disqualification or bar.** Unless otherwise specified by statute or rule, a suspension, revocation, disqualification or bar shall begin 30 days after the department's notice of suspension, revocation, disqualification or bar is served.

This rule is intended to implement Iowa Code sections 321.208, 321.209, 321.210, and 321.556.

**761—615.37(321) Service of notice.**

**615.37(1)** The department shall send a notice of denial, cancellation, suspension, revocation, disqualification or bar by first-class mail to the person's mailing address as shown on departmental records.

**615.37(2)** In lieu of service by mail, the notice may be delivered by a peace officer, a departmental employee, or any person over 18 years of age.

*a.* The person serving the notice shall prepare a certificate of personal service certifying delivery, specifying the name of the receiver, the address and the date, or certifying nondelivery.

*b.* The department shall pay fees for personal service of notice by a sheriff as specified in Iowa Code section 331.655. The department may also contract for personal service of notice when the department determines that it is in the best interests of the state.

**615.37(3)** The denial, cancellation, suspension, revocation, disqualification or bar shall become effective on the date specified in the notice.

**615.37(4)** The department may prepare an affidavit of mailing verifying the fact that a notice was mailed by first-class mail. To verify the mailing of a notice, the department may use its records in conjunction with U.S. Postal Service records available to the department.

**615.37(5)** The department shall prepare an affidavit of mailing if the department determines, under Iowa Code section 321.211A, that it failed to serve a notice of suspension or revocation. The department shall send the affidavit to the court that rendered the conviction.

This rule is intended to implement Iowa Code sections 321.16, 321.211, 321.211A, 321.556, 321J.9, 321J.12, and 331.655.

**761—615.38(17A,321) Hearing and appeal process.**

**615.38(1) Applicability.** This rule applies to:

*a.* License denials, cancellations and suspensions under Iowa Code sections 321.177 to 321.215 and 321A.4 to 321A.11 except denials under Iowa Code subsection 321.177(10) and suspensions under Iowa Code sections 321.210B, 321.210D, 321.213A and 321.213B.

*b.* License suspensions and revocations under Iowa Code sections 321.218 and 321J.21.

*c.* License revocations under Iowa Code sections 321.193 and 321.205.

*d.* Disqualifications from operating a commercial motor vehicle under Iowa Code section 321.208.

*e.* License bars under Iowa Code section 321.556.

**615.38(2) Submission of request or appeal.**

*a.* A person subject to a sanction listed in subrule 615.38(1) may contest the action by following the provisions of 761—Chapter 13 as supplemented by this rule.

*b.* A request for an informal settlement, a request for a contested case hearing, or an appeal of a presiding officer's decision shall be submitted to the director of the office of driver services at the address in 761—600.2(17A).

*c.* The request or appeal shall include the person's name, date of birth, driver's license or permit number, complete address and telephone number, and the name, address and telephone number of the person's attorney, if any.

**615.38(3) Informal settlement or hearing.**

*a.* The person may request an informal settlement. Following an unsuccessful informal settlement procedure, or instead of that procedure, the person may request a contested case hearing.

b. Notwithstanding paragraph “a” of this subrule, a request received from a person who has participated in a driver improvement interview on the same matter shall be deemed a request for a contested case hearing.

c. A request for an informal settlement or a request for a contested case hearing shall be deemed timely submitted if it is delivered to the director of the office of driver services or postmarked within the time period specified in the department’s notice of the sanction.

(1) Unless a longer time period is specified in the notice or another time period is specified by statute or rule, the time period shall be 20 days after the notice is served.

(2) If the department fails to specify a time period in the notice, the request may be submitted at any time.

**615.38(4) Appeal.** An appeal of a presiding officer’s decision shall be submitted in accordance with 761—13.7(17A).

**615.38(5) Stay of sanction.**

a. When the department receives a properly submitted, timely request for an informal settlement, request for a contested case hearing or appeal of a presiding officer’s proposed decision regarding a sanction listed in subrule 615.38(1), it shall, after a review of its records to determine eligibility, stay (stop) the sanction pending the outcome of the settlement, hearing or appeal unless prohibited by statute or rule or unless otherwise specified by the requester/appellant.

(1) If the stay is granted, the department shall issue and send to the person a notice granting the stay. The stay is effective on the date of issuance. The notice allows the person to drive while the sanction is stayed if the license is valid and no other sanction is in effect.

(2) A person whose stay authorizes driving privileges shall carry the notice of stay at all times while driving.

b. Of the sanctions listed in subrule 615.38(1), the department shall not stay the following, and the person’s driving privileges do not continue:

(1) A suspension for incapability.

(2) A denial.

(3) A disqualification from operating a commercial motor vehicle.

(4) A suspension under Iowa Code section 321.180B.

(5) A suspension or revocation under Iowa Code section 321.218 or 321J.21.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177 to 321.215, 321.218, 321.556, 321A.4 to 321A.11, and 321J.21.

**761—615.39(321) Surrender of license.** A person whose Iowa license has been canceled, suspended, revoked or barred or who has been disqualified from operating a commercial motor vehicle shall surrender the license to the designated representative of the department on or before the effective date of the sanction.

This rule is intended to implement Iowa Code sections 321.201, 321.208, 321.212, 321.216, 321.556, and 321A.31.

**761—615.40(321) License reinstatement or reissue.** A person who becomes eligible for a license after a denial, cancellation, suspension, revocation, bar or disqualification shall be notified by the department to appear before a driver license examiner to obtain or reinstate the license. The license may be issued if the person has:

**615.40(1)** Filed proof of financial responsibility under Iowa Code chapter 321A, when required, for all vehicles to be operated. The class of license issued will depend on the examinations passed and other qualifications of the applicant. Regardless of the class of license issued, the license shall be valid only for the operation of the motor vehicles covered under the proof of financial responsibility filed by the applicant.

**615.40(2)** Paid the civil penalty when required. The civil penalty is specified in Iowa Code Supplement section 321.218A or 321A.32A.

**615.40(3)** Complied with the specific instructions given in the department's notice terminating the sanction.

**615.40(4)** Successfully completed the required driver license examination.

**615.40(5)** Paid the reinstatement fee when required. The reinstatement fee is specified in Iowa Code section 321.191.

**615.40(6)** Paid the appropriate license fee or duplicate license fee. These fees are specified in Iowa Code sections 321.191 and 321.195.

This rule is intended to implement Iowa Code sections 321.186, 321.191, 321.195, 321.208, 321.212, and 321A.17 and Iowa Code Supplement sections 321.218A and 321A.32A.

[ARC 7902B, IAB 7/1/09, effective 8/5/09]

**761—615.41** Reserved.

**761—615.42(321) Remedial driver improvement action under Iowa Code section 321.180B.**

**615.42(1)** The department shall require remedial driver improvement action when a person holding an instruction permit, an intermediate license or a full-privilege driver's license under Iowa Code section 321.180B is convicted of a moving violation or has a contributive accident and the violation or accident occurred during the term of the instruction permit or intermediate license.

**615.42(2)** Completion of remedial driver improvement action means any or all of the following as determined by the department: suspension, safety advisory letter, additional restriction(s), vision screening, knowledge examination, and driving examination.

**615.42(3)** A suspension period under this rule shall be for no less than 30 days nor longer than one year. A person whose driving privilege has been suspended under this rule is not eligible for a temporary restricted license.

**615.42(4)** Remedial driver improvement action or suspension under this rule terminates when a person attains the age of 18.

This rule is intended to implement Iowa Code section 321.180B.

[ARC 7902B, IAB 7/1/09, effective 8/5/09]

**761—615.43(321) Driver improvement program.**

**615.43(1)** *When required.*

*a.* In lieu of suspension, the department may require the following persons to attend and successfully complete, at the person's own expense, a driver improvement program approved by the department:

- (1) A habitual violator.
- (2) A person who is convicted for speeding at least 25 but not more than 29 miles per hour over the legal limit.
- (3) A person whose license is subject to suspension under Iowa Code section 321.210C.

*b.* However, a person shall not be assigned to a driver improvement program more than once within a two-year period.

**615.43(2)** *Scheduling.* The department shall schedule attendance at a program nearest the person's last known address.

*a.* One request for rescheduling may be granted if the program begins within 30 days of the originally scheduled date and if space is available.

*b.* A request to attend a program in another state may be granted if the curriculum is approved by the department.

**615.43(3)** *Probation.* When a person is required to attend and successfully complete a driver improvement program, the department shall also require the person to complete a probationary driving period not to exceed one year. One conviction for a moving violation committed during probation may result in suspension of the person's license. The suspension period shall be at least 90 days, unless reduced by a driver's license hearing officer based on mitigating circumstances.

**615.43(4) *Failure to attend.*** The department shall suspend the license of a person who is required to attend a driver improvement program and who does not attend, or does not successfully complete, the program. The suspension period shall be at least 90 days.

This rule is intended to implement Iowa Code sections 321.210 and 321.210C.

**761—615.44(321) Driver improvement interview.**

**615.44(1)** The department may require a person whose license is subject to suspension to appear for a driver improvement interview.

**615.44(2)** The department may take one or more of these remedial actions following the interview:

*a.* Suspend the person's license and issue a temporary driving permit which will allow the person to drive until the effective date of the suspension.

*b.* Place the person on probation. One conviction for a moving violation committed during probation may result in suspension of the person's license.

*c.* Restrict the person's license to specified vehicles, times, routes, locations, or other conditions.

*d.* Order the person to successfully complete a driver improvement program in accordance with rule 615.43(321).

*e.* Take no further action.

**615.44(3)** The department shall suspend the license of a person who is required to appear for a driver improvement interview and fails to appear.

This rule is intended to implement Iowa Code sections 321.193 and 321.210.

**761—615.45(321) Temporary restricted license (work permit).**

**615.45(1) *Ineligibility.*** The department shall not issue a temporary restricted license under Iowa Code subsection 321.215(1) to an applicant:

*a.* Whose license has been denied or canceled.

*b.* Whose license has been suspended for incapability.

*c.* Whose license has been suspended for noncompliance with the financial responsibility law.

*d.* Whose minor's school license or minor's restricted license has been suspended or revoked.

*e.* Whose license has been suspended for failure to pay a fine, penalty, surcharge or court costs.

*f.* Whose period of suspension or revocation has been extended for operating a motor vehicle while under suspension or revocation.

*g.* Whose license has been mandatorily revoked under Iowa Code section 321.209, subsections 1 to 5 or subsection 7, or for a second or subsequent conviction for drag racing.

*h.* Whose license has been suspended under the nonresident violator compact.

*i.* Who is barred under Iowa Code section 321.560.

*j.* Whose license has been suspended or revoked for a drug or drug-related offense.

*k.* Whose license has been suspended due to receipt of a certificate of noncompliance from the child support recovery unit.

*l.* Whose license has been suspended due to receipt of a certificate of noncompliance from the college student aid commission.

*m.* Whose license has been suspended for a charge of vehicular homicide.

*n.* Who has been suspended under Iowa Code subsection 321.180B(3).

**615.45(2) *Application.***

*a.* To obtain a temporary restricted license, an applicant shall submit a written request for an interview with a driver's license hearing officer. The request shall be submitted to the office of driver services at the address in 761—600.2(17A).

*b.* If the driver's license hearing officer approves the issuance of a temporary restricted license, the officer shall furnish to the applicant application Form 430100, which is to be completed and submitted to the office of driver services.

*c.* A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.

**615.45(3) Statements.** A person applying for a temporary restricted license shall submit all of the following statements that apply to the person's situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

- a. A statement from the applicant.
- b. A statement from the applicant's employer unless the applicant is self-employed including, when applicable, verification that the applicant's use of a child care facility is essential to the applicant's continued employment.
- c. A statement from the health care provider if the applicant or the applicant's dependent requires continuing health care.
- d. A statement from the educational institution in which the applicant is enrolled.
- e. A statement from the substance abuse treatment program in which the applicant is participating.
- f. A copy of the court order for community service and a statement describing the assigned community service from the responsible supervisor.
- g. A statement from the child care provider.

**615.45(4) Additional requirements.** An applicant for a temporary restricted license shall also:

- a. Provide a description of all motor vehicles to be operated under the temporary restricted license.
- b. File proof of financial responsibility under Iowa Code chapter 321A, if required, for all motor vehicles to be operated under the temporary restricted license.
- c. Pay the required civil penalty specified in Iowa Code Supplement section 321.218A or 321A.32A.

**615.45(5) Issuance and restrictions.**

- a. When the application is approved and all requirements are met, the applicant shall be notified by the department to appear before a driver's license examiner. The applicant shall pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees.
- b. The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

**615.45(6) Denial.** An applicant who has been denied a temporary restricted license or who contests the license restrictions imposed by the department may contest the decision in accordance with rule 761—615.38(321).

These rules are intended to implement Iowa Code chapter 321A and sections 252J.8, 321.177, 321.178, 321.184, 321.185, 321.186, 321.189, 321.191, 321.193, 321.194, 321.201, 321.205, 321.209, 321.210, 321.210A, 321.212, 321.213A, 321.213B, 321.215, 321.218, 321.513, and 321.560 and Iowa Code Supplement sections 321.218A and 321A.32A.

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